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FEDERAL COMMUNICATIONS COMMISSION

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***Commissioner Quello designated as Chairman effective February 5, 1993.**

****Commissioner Marshall resigned effective April 30, 1993.**

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Federal Communications Commission Record

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-406

In re Applications of

PENSACOLA RADIO PARTNERS	File No. BPH-880323MJ
VERNON C. FLOYD	File No. BPH-880324MK
MIRACLE RADIO, INC.	File No. BPH-880324NU
DAVID EARL HOXENG d/b/a ADX COMMUNICATIONS OF PENSACOLA	File No. BPH-880324OJ

For Construction Permit for a
New FM Station on Channel 254C2
in Pensacola, Florida

Appearances

Michael J. Wilhelm, Esq. on behalf of Pensacola Radio Partners; *Christopher J. Holt, Esq.* on behalf of Vernon C. Floyd; *Gary S. Smithwick, Esq.* and *Henry E. Crawford, Esq.* on behalf of Miracle Radio, Inc.; *Linda R. Bocchi, Esq.* and *Dan J. Alpert, Esq.* on behalf of David Hoxeng, d/b/a ADX Communications of Florida; and *James Shook, Esq.* and *Gary Schonman, Esq.* on behalf of the Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIAK

Issued: September 24, 1993; Released: October 4, 1993

PRELIMINARY STATEMENT

1. This case involves four remaining mutually exclusive applicants for construction permit for a new Class A FM station in Pensacola, Florida. A total of 27 applications for this facility were originally designated for hearing.[1] The four that remain are Pensacola Radio Partners ("PRP"), Vernon C. Floyd ("Floyd"), Miracle Radio, Inc. ("Miracle") and David Early Hoxeng d/b/a ADX Communications of Pensacola ("ADX").

2. In addition to the standard comparative issue, the *HDO* designated an air hazard issue against ADX (*HDO*, ¶13). That issue was resolved in favor of ADX by summary decision (*Order*, FCC 91M-107, released January 11, 1991).

3. A prehearing conference was held on November 29, 1990 (Tr. 1-9). Hearing sessions commenced on September 30, 1991, and concluded on October 3, 1991 (Tr. 18-897). A rebuttal session was held on October 29, 1991 (Tr. 898-963).

4. By *Memorandum Opinion and Order*, FCC 91M-3160, released October 25, 1991, the Presiding Judge granted PRP's Motion to Enlarge Issues against Floyd and the following issues were specified against Floyd:

> (a) Whether Vernon C. Floyd attained reasonable assurance of access to his initial proposed transmitter site before certifying his application;
>
> (b) Whether, at the time he certified site access, Mr. Floyd knew that the incomplete arrangements with Mr. Holloway were an insufficient basis for a valid site certification; and
>
> (c) If either or both of the issues above are resolved adversely to Mr. Floyd, whether he is basically qualified to be a Commission licensee.

5. By *Memorandum Opinion and Order*, FCC 91M-3483, released December 23, 1991, the Presiding Judge granted both PRP's and Miracle's Motion to Enlarge Issues against Floyd. The issues against Floyd were specified as follows:

> (a) To determine whether Vernon C. Floyd was financially qualified at the time he certified his financial qualifications;
>
> (b) To determine whether Vernon C. Floyd misrepresented facts or lacked candor in certifying his financial qualifications; and
>
> (c) To determine, in light of the evidence adduced under issues (a) and (b), whether Vernon C. Floyd is qualified to be a Commission licensee.

Hearing sessions on the transmitter site and financial qualifications and misrepresentation issues added against Floyd were held on February 10-11, 1992 (Tr. 898-1099, 1166-1355).

6. A rebuttal hearing session commenced and concluded on March 25, 1992 and the record was closed (Tr. 1356-1450).

7. By *Memorandum Opinion and Order*, FCC 92M-666, released June 12, 1992, the record was reopened and the following issues were specified against Miracle:

> (a) Whether Mr. John Donovan, Jr., intentionally misrepresented facts in his hearing testimony; and, if so,
>
> (b) Whether Miracle Radio, Inc., suborned the false testimony of Mr. John Donovan, Jr.; and, if so;
>
> (c) Whether Miracle Radio is basically qualified to be a Commission licensee.

A hearing was held on the above issues on October 20, 1992.

[1] *Hearing Designation Order*, DA 90-1136, released September 24, 1990 (hereinafter "*HDO*").

8. By *Memorandum Opinion and Order*, FCC 92M-995, released October 7, 1992 an additional issue was specified against Miracle as follows:

> Whether Miracle intentionally concealed documents it was required to produce and, if so, the effect there of on Miracle's basic qualifications and comparative standing in this case.

9. The hearing on the final issue was held on January 27, 1993. Following the close of the hearing, on February 4, 1993, Miracle produced six documents which were asserted as being privileged materials. Some two weeks later, the other applicants sought to obtain the privileged documents and were granted production in *Memorandum Opinion and Order*, FCC 93M-91, released March 5, 1993. On March 12, 1993, Miracle submitted an appeal of the ruling but was ultimately turned down by the Review Board on May 19, 1993. *Pensacola Radio Partners*, FCC 93R-20, released May 19, 1993 (Rev. Bd.).

10. On June 18, 1993, the Presiding Judge, on his own motion, established dates for filing findings of fact and conclusion of law.[2] That time was later extended at the request of ADX until July 26, 1993. Replies were filed August 13, 1993.[3]

FINDINGS OF FACT

Pensacola Radio Partners

11. PRP is a Florida General Partnership operating pursuant to a written partnership agreement between Barbara McGreevy and Martin McGreevy, who are husband and wife (PRP Ex. 1; Tr. 28). Barbara McGreevy and Martin McGreevy each owns a 50% interest in the Partnership (PRP Ex. 1, p. 1). Decision making in the partnership will be primarily by consensus of the partners (PRP Ex. 1, Attachment 1).

12. *Diversification.* PRP has no media interests. However if it acquires any such media interests before it is awarded a construction permit, they will be divested. Moreover, should the principals engage in employment that would violate the Commission's cross-interest policy, that employment will be discontinued if PRP receives a construction permit (PRP Ex.2).

13. *Integration.* Barbara McGreevy will be the general manager of the station and will devote a minimum of 40 hours per week to her duties. As manager, she will supervise all of the station's staff, some of whom may be subject to department heads who report directly to Mrs. McGreevy. She will make all major financial decisions at the station and will have final authority over the program broadcast. She will engage in no activities, be they employment or otherwise, that would interfere with her integration commitment (PRP Ex. 3). After they filed their application, Mr. and Mrs. McGreevy acquired, through a lottery, a liquor license. They have constructed the liquor store and have been operating the business since before hearing. Mrs. McGreevy has promised to devote no more than 15 hours per month to work that is associated in any way with the liquor store. If the demands of the liquor store require devotion of more than 15 hours per month to the establishment then the store will be closed immediately and sold (*Id.*). Mrs. McGreevy has resided continuously within the proposed station's city grade contour since July of 1981 (*Id.*, p. 2). Her address is a Pensacola address. However, she lives in the unincorporated area of Escambia County contiguous with Pensacola proper, in a subdivision called Grand Lagoon. If PRP is awarded the construction permit, Mrs. McGreevy will take up full-time and permanent residence with the Pensacola city limits (*Id.*; Tr. 178). Mrs. McGreevy is assisted at the liquor store by one other employee (Tr. 163, 242). The clerk runs the store the same as Mrs. McGreevy does. Mrs. McGreevy stated that she could be a manager (Tr. 164). Mrs. McGreevy added, however, that she would retain responsibility for overseeing that person and would continue to review the store's overall performance (Tr. 65-66).

14. Mrs. McGreevy has done volunteer work for various civic organizations, each of which is located within PRP's proposed service area (PRP Ex. 3). In 1990, after filing its application for the Pensacola FM station, Martin and Barbara McGreevy joined the Pensacola Chamber of Commerce (Tr. 102, 259). Mrs. McGreevy has neither been an officer nor a member of any committee of the Chamber of Commerce (Tr. 103-104). In addition, she has never participated in any civic activities that the Chamber has engaged in (Tr. 121). In 1985 and 1986, Mrs. McGreevy twice canvassed her neighborhood soliciting donations for the American Heart Association (PRP Ex. 3; Tr. 103-104). Her canvassing covered approximately 100 homes in her subdivision (Tr. 105). Since 1981, Mrs. McGreevy has been a member of Holy Spirit Catholic Church (PRP Ex. 3; Tr. 106). Her total participation has been limited to participating in bake sales; Christmas food collection; glass and can drives; and attending Mass (PRP Ex. 3; Tr. 106). Since 1981, Mrs. McGreevy has worked as a volunteer collecting food and clothing for Loaves & Fishes Kitchen (PRP Ex. 3; Tr. 109). Mrs. McGreevy engages in these collections three or four times per year.

15. Mrs. McGreevy claims credit for the following "broadcast-related" experience. At Wilding Studios from 1965-1969, she handled publicity (Tr. 92). She was also involved in producing TV programming that was allegedly broadcast (Tr. 94). In this position, Mrs. McGreevy never managed or supervised (Tr. 92). From 1969-1970, she was involved in television production for Bell & Howell (PRP Ex. 3; Tr. 95). In 1970, Mrs. McGreevy was both registrar and teacher at Bell & Howell's School of Instructional Technology (PRP Ex. 3; Tr. 96). In 1989 for a four week period, Mrs. McGreevy served as production coordinator for Grand Valley University/Amway Corporation (PRP Ex. 3; Tr. 97).

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[2] *Order*, FCC 93M-376, released June 18, 1993.

[3] In its Reply Findings, Miracle requested that three attached exhibits (Exhibits 1-3) be considered. None of the documents was offered into evidence by Miracle and cannot be made part of the record unless proper Commission procedure be followed. *See Evergreen Broadcasting Co.*, 7 FCC Rcd 6601, 6602 (1992). The other applicants (Joint Movants) have moved to strike paragraphs 89-93, inclusive and Exhibits 1-3, inclusive from the Miracle Reply Findings. (See Joint Motion to Strike Portion of Miracle Radio, Inc. Reply Findings.) The Motion IS GRANTED and paragraphs 89-93, inclusive, and Exhibits 1-3, inclusive, ARE STRICKEN. In light of the action taken herein, PRP's Motion to Strike, filed September 2, 1993 IS DISMISSED AS MOOT.

16. Mr. McGreevy will serve as the permanent on-site manager and director of engineering devoting a minimum of 40 hours per week to that task at the station (PRP Ex. 4). He will also supervise the station's sales staff and supervise those persons involved with the content of commercials that are broadcast over the station. He will oversee the technical operation of the station, supervising employees in the proper operation of station equipment and supervising technicians maintaining and servicing station equipment. He will make all decisions relating to new or replacement technical equipment or the station. He will also have authority to hire and fire sale personnel and technical personnel. He will not engage in activities that would interfere with his integration commitment. More particularly, he will resign his current employment with Broadcast Television Systems or such other employment he may have at the time before the proposed station goes on the air. Thereafter, he will devote no more than 15 hours per month to work associated in any way with the liquor store in which he is a partner with his wife (PRP Ex. 4, p. 1). Should it ever occur that the demands of the liquor store require Mr. McGreevy to devote more than 15 hours per month to the enterprise then the store will be closed immediately and sold (*Id.*). Mr. McGreevy stated that liquor licenses in Florida are negotiable instruments and can be sold (Tr. 247). He estimated that the going rate for a liquor license in the Pensacola area is between $55,000 and $75,000, with an average of $65,000 (Tr. 299).

17. Martin McGreevy has resided continuously within the 70 dbu contour of the proposed station since July, 1981 (PRP Ex. 4; Tr. 210). Mr. McGreevy's residence is not within the Pensacola corporate limits (PRP Ex. 4; Tr. 210). It lies within the unincorporated area of contiguous Escambia County (PRP Ex. 4; Tr. 210). If PRP is awarded the construction permit, Mr. McGreevy will take up full-time permanent residence within the Pensacola city limits (PRP Ex. 4) Mr. McGreevy has performed some civic activities. He has been a member of the Pensacola Chamber of Commerce (Tr. 259). Since 1989, Mr. McGreevy has been a volunteer for FRIARY, a substance abuse organization in Gulf Breeze, Florida (PRP Ex. 4; Tr. 260). On two to three occasions, he has devoted four to six hours of his time to this organization by loaning it video tape equipment for its programs (Tr. 262-263). Mr. McGreevy testified that he has taken courses in CPR and rescue under the auspices of the American Heart Association (PRP Ex. 4; Tr. 265). Mr. McGreevy testified that he takes instruction for three evenings every two years (Tr. 265). Mr. McGreevy testified that his certification was current and up-to-date (Tr. 266).

18. Mr. McGreevy claims credit for the following broadcast or broadcast related experience. In 1962, he worked part time for approximately a year as a contract engineer for WAEZ-FM, Miami, Florida (PRP Ex. 4; Tr. 253-254). Also in 1962, Mr. McGreevy worked 20 hours per week as a maintenance technician for WLBW-TV, Miami, Florida (PRP Ex. 4; Tr. 255). From 1963-1966, Mr. McGreevy was primarily a maintenance and operations staffer for the University of Miami, Miami, Florida (PRP Ex. 4; Tr. 188). He was responsible for maintaining video recorders, audio recorders, and television cameras in the television projection or production facility at the learning resources center (Tr. 188). From 1966-1968, he was an engineering manager for a TV production facility at Miami Dade Junior College, Miami, Florida (PRP Ex. 4; Tr. 188-189). From 1968-1970, he was studio manager for Bell & Howell Video, Chicago, Illinois (PRP Ex. 4; Tr. 190). From 1970-1972, Mr. McGreevy worked as a sales engineer for Southeast Electronics Radio & TV Supply, Co., Jacksonville, Florida (PRP Ex. 4; Tr. 194). Southeast Electronics Radio & TV Supply Co., did not produce programs (Tr. 194). This company was a turnkey contractor that installed broadcast equipment in recently constructed buildings (Tr. 198). From 1972-1977, he was a Regional Manager for International Video Corp. Sunnyvale, California (PRP Ex. 4). International Video Corp. produced no programs. Instead, it was an equipment manufacturer that also sold turnkey systems (Tr. 199). From 1977-1987, Mr. McGreevy was a regional manager for Thomson CSF Broadcast, Stamford, Connecticut (PRP Ex. 4). Thomson was also an equipment manufacturer and manufactured very high quality television equipment and systems (Tr. 199-200). From 1987 to present, Mr. McGreevy has been regional manager for BTS, Salt Lake City, Utah (PRP Ex. 4). BTS produces no programming (Tr. 200). In PRP's direct case, Martin McGreevy outlined several "special projects" that he has been involved in and claims broadcast enhancement credit for his involvement (PRP Ex. 4; Tr. 200-208).

19. *Auxiliary Power.* PRP's proposed studio and transmitter facilities will be equipped with auxiliary power units (PRP Ex. 5).

Vernon C. Floyd

20. Vernon C. Floyd is an individual applicant for the Pensacola FM channel (Floyd Ex. 1, p. 1).

21. *Diversification.* Floyd presently does business as Circuit Broadcasting Company of Hattiesburg, a sole proprietorship that is the licensee of Radio Stations WORV(AM) and WJMG(FM), Hattiesburg, Mississippi. If he is awarded the construction permit for Pensacola Channel 254C2, he will divest himself of his interest in and sever all connections with WORV/WJMG prior to the initiation of program test authority for the Pensacola station (*Id.*).

22. *Integration.* Floyd is an African American and will work full time, not less than 40 hours per week, as general manager of his proposed station (*Id.*, pp. 1-2). In that capacity, he will have ultimate supervisory responsibility over all aspects of the station's operations including, but not limited to, the establishment and implementation of station policies; the supervision of station personnel; the management of station finances; the implementation of the station's Equal Employment Opportunities Program (Tr. 365-66); and the supervision of all aspects of the station's technical operations (Floyd Ex. 1, p. 2). In order to assume his duties as general manager of the Pensacola station, he will terminate his employment at WORV/WJMG prior to the commencement of the proposed new station's operations, and he will hold no other employment (*Id.*).

23. Floyd presently resides in Hattiesburg, Mississippi, which is approximately 150 miles from Pensacola, Florida (Tr. 331-32). Between 1927 and 1969 he resided in Mobile, Alabama which is approximately 50 miles from Pensacola, Florida (Tr. 350-51). Between 1953 and 1969, Floyd attended church services about once or twice a month at the Adventist Church in Pensacola (Floyd Ex. 1, p. 7; Tr. 353). Between approximately 1958 and 1965, he attended annual "in-gatherings" at the Pensacola church to raise funds in case of disaster (Floyd Ex. 1, p.7; Tr. 410-11). Between 1958 and 1960, Floyd attended Smiley's Temple Adventist Church in Daphne, Alabama, which also is located within the service area of his proposed station (Floyd Ex. 1, p. 7). He helped to build that church and periodically conducted

services there as a local elder (Tr. 351-52). Moreover, in approximately 1958, he helped to build the Atmore Adventist Church in Atmore, Alabama, which is located within the service area of the proposed station (Tr. 350-51). He periodically attended services at the Atmore church and also conducted services there as a local elder (Tr. 351-412). He will move to the City of Pensacola, Florida, and will reside there on a full-time basis if his application for the FM station is granted (Tr. 346).

24. Floyd has broadcast experience, including experience in the management of broadcast facilities (Floyd Ex. 1). From approximately 1953 until 1966, Floyd was employed by radio station WMOZ(AM), Mobile, Alabama, as the station's chief engineer (Floyd Ex. 1). Since 1969, Floyd has served as a general manager of a radio station WORV(AM) in Hattiesburg, Mississippi. Since 1982, Floyd has also been the general manager of radio station WJMG(FM), Hattiesburg, Mississippi (Floyd Ex. 1).

25. *Auxiliary Power.* Floyd's proposed station will be equipped with emergency auxiliary generating equipment at both the transmitter and the studio sites, which, in the event of a partial or complete power failure, will permit the station to provide continuing service to the public (Floyd Ex. 1, p. 8; Tr. 408).

Financial Qualification Issue - Floyd

26. In his application, Floyd certified that he had sufficient net liquid assets on hand to construct and operate his proposed facilities for three months without revenue (Floyd Phase II, Ex. 1). He also indicated that he was in the process of assembling documentation of the availability of those net liquid assets (*Id.*).

27. Floyd alleges that prior to the filing of the application, he gathered information from a variety of sources to determine what it would cost to construct and operate his proposed facility for three months without revenue (*Id.*). First, he obtained a written equipment proposal from the Harris Corporation, and conducted an inventory of surplus equipment on hand at his present stations to determine whether any of those materials could be used at the Pensacola facility (*Id.*). He prepared an itemized list of equipment that he would need to purchase in order to construct and operate his proposed FM facility (*Id.*). He reviewed his equipment figures and other construction costs with counsel and calculated his anticipated operating expenses for three months without revenue, combining that amount with his estimated construction costs and estimated legal fees to obtain a total budget figure (Floyd Phase II, Ex. 1, p. 1-2). That budget is $260,527.14 for construction and for operating the station for three months and legal fees (Floyd Phase II, Ex. 1, App. A). There is no entry for construction of a transmitter building (Tr. 1119). Floyd claims that this item can be included in the "miscellaneous" (Tr. 1119) provisions in the budget, but agrees he did not think about its cost at the time he prepared his budget (Tr. 1193).

28. The primary source of funds being relied upon by Floyd to meet this budget is the proceeds from the sale of his present stations (Floyd Phase II, Ex. 1). He claims that he developed an estimate of the stations' fair market value with the assistance of counsel, and determined that the sale proceeds from the stations would cover his estimated costs for the new FM station. He also claims that he had cash on hand consisting of $75,000 on deposit in his personal savings account, $9,000 on deposit in his personal checking account, and over $62,000 in his stations' checking account as of March 23, 1988 (*Id.*). This differs from the plan represented at the deposition in this process, whereby he stated only that he planned to use "proceeds from the existing station" to finance the construction and operation of his station (Tr. 1182-83). At the deposition he did not mention using cash on hand to finance the station (Tr. 1183). There is no written record of his willingness to put up cash to pay for his Pensacola station (Tr. 1199-1200).

29. His estimate of the stations' fair market value was based upon figures for comparable stations that had been reported in the trade press, and discussions of station values with media brokers who called him. He does not recall, however, the call letters of any of the "comparable stations" (Tr. 1108-09). He also does not recall if media brokers actually called him before his application was filed (Tr. 1118). Based upon discussions with counsel, he believed that his stations' value could be determined by multiplying nine or ten times their cash flow or three times their gross earnings (Floyd Phase II, Ex. 1). This method of valuation was contained in NAB publications (Tr. 1228-34), although the publications state that "these guidelines are rarely reliable" (Tr. 1297; Floyd Phase II, Ex. 7). The stations' 1986 cash flow was $30,161; the 1987 cash flow was $49,640 (Floyd Phase II, Ex. 1, Att. F). If the 3x multiple were applied to his 1987 gross revenues, the value of his station would be computed to be $341,106 (Tr. 1299-1301). Based upon his stations' performance, he formulated an estimate of the stations' value based on their earnings (Floyd Phase II, Ex. 1). Based upon the stations' ratings and past inquiries, he estimated that the stations had a fair market value of approximately $500,000 to $550,000, not including the $62,000 that he had on deposit in the stations' bank account (Floyd Phase II, Ex. 1). He would consult his deposit tickets "almost every week" (Tr. 1238) to calculate the value of his stations (Tr. 1230). He would calculate an "average" on paper (Tr. 1283), although he does not possess these calculations any more (Tr. 1284). He expected that he would net a minimum of $350,000 to $400,000 from the sale of the stations (Floyd Phase II, Ex. 1, p. 4). Prior to filing his application, there were no outstanding offers to purchase his station (Tr. 1107). He had never had his station appraised (Tr. 1107). Based upon this personal valuation, as well as the funds that he had on deposit in the bank, he believed that he was financially qualified to construct and operate his proposed Pensacola station (Floyd Phase II, Ex. 1).

30. Floyd learned that a formal appraisal was necessary to support his belief concerning the value of his stations, and on March 23, 1988, the same day as he executed his financial certification, had his legal counsel retain Susan Harrison to appraise his stations. Allegedly he was informed on that date that "Ms. Harrison confirmed the general accuracy of [his] estimate" (*Id.*), and he then certified his financial qualifications to the Commission, but claimed that he was in the process of finalizing the documentation to support that certification (Floyd Phase II, Ex. 1, App. E; Floyd Phase II, Ex. 1, p. 5). Ms. Harrison's testimony reflects, however, that she informed Floyd's counsel that she could not prepare an appraisal of Floyd's stations for at least a week, and her testimony reflects that she did not prepare his appraisal until June 8, 1988 (Floyd Phase II, Ex. 2, p. 3, Tr. 979), and she has "absolutely no memory" of providing an opinion as to the value of the station when Floyd's attorney first called (Tr. 1097). The appraisal was not ultimately obtained until June 8, 1988 (Floyd Phase II, Ex. 1, App. F). Also during cross-examina-

tion. Floyd admitted that when he filed his application, he was not actually finalizing any documents at that point (Tr. 1217).

31. Ms. Harrison's appraisal was based upon an analysis of the stations' operations and staffing, financial performance and history, equipment and programming (Floyd Phase II, Ex. 2, p. 3). She computed the stations' net revenues and total operating revenues for the years 1986 and 1987 and computed the stations' operating cash flow and cash flow margin for those years, and referred to sales of what she considered to be comparable stations in comparable markets, for confirmation (Tr. 1031-32; Floyd Phase II, Ex. 2, p. 3). The sales figures for other stations were obtained from "Broadcasting Magazine" (Tr. 1007). She does not know whether the figures in "Broadcasting" reflect cash sales or sales with terms included (Tr. 1023). She applied a multiple of nine-ten times operating cash flow (Tr. 987). "Cash flow" is operating income before depreciation, interest, taxes, and capital expenditures (Tr. 987). It is net revenues minus total operating expenses (Tr. 1064). In this case, "cash flow" was $49,640 (Tr. 1036). If Floyd's salary is excluded, the cash flow then is higher (Tr. 1014, 1085). Floyd confirmed that a salary for him was not included in the financial information provided to Ms. Harrison (Tr.1207). A station manager would be paid $200-250 a week (Tr.1252). Based upon the valuation, she estimated the stations' fair market value to be between $445,000 to $495,000 (Floyd Phase II, Ex. 3, p. 4). "Fair market value" is the cash price that would be paid by a willing buyer within a reasonable amount of time (Tr. 1018, 1074). She has never inspected Floyd's station (Tr. 1008). She does not know if Floyd has paid himself a salary (Tr. 1084), which she agrees could affect her economic analysis of the station (Tr. 1013). She also did not consider the population in the service area of the stations (Tr. 993), the stations' ratings (Tr. 996), the growth of the area (Tr. 1948), or the staffing of the stations (Tr. 1085). Although she could not cite a source, she believes 10 times multiples were commonly used in appraisals at the time (Tr. 1064-65). Based upon the stations' cash flow in 1987 of $30,000, the stations were worth $300,000 in 1987 (Tr. 1098). Today six and one-half-seven times cash flow is a typical multiplier (Tr. 1072). Although she has done "appraisals" in the past (Tr. 1018), she has never gone back to see if the appraisals were correct (Tr. 1019).

32. *Charles Giddens Appraisal.* Charles Giddens, President of Media Venture Partners ("MVP"); a brokerage, appraisal and analysis firm, also provided an appraisal (Tr. 1361). MVP was the largest transaction mergers and acquisition company in the broadcasting business in 1991 (Tr. 1361). Mr. Giddens has personally appraised 75 stations and MVP has conducted several hundred (Floyd Phase II, Ex. 3; Tr. 1364-65). Mr. Giddens has personally been engaged in providing media brokerage services since 1984 (Tr. 1365). Other than working for MVP, Mr. Giddens owns a number of stations personally (Tr. 1366). He has worked in almost every position in the broadcasting business and he has participated as a speaker in broadcast industry functions (Tr. 1366). These public speaking engagements have principally touched on the methodology and mechanics of station evaluation (Tr. 1367). Mr. Giddens described several different formulas and methodology that are used in evaluating a radio station: discounted cash flow, multiple cash flow, multiple of gross revenue, net revenue, and comparable (Tr. 1369-71).

33. Mr. Giddens reviewed the same material that Ms. Harrison relied on in evaluating WORV/WJMG (Tr. 1379). It was Mr. Giddens' opinion that as of March 24, 1988, the fair market value of WORV/WJMG was $270,000 on "terms" (netting $75,000 in cash) and in the range of $200,000 for a cash transaction (Tr. 1379, 1381, 1430).

34. In analyzing the same data use by Ms. Harrison, Mr. Giddens noticed that salary wages for a general manager, sales manager and chief engineer were omitted (Tr. 1389). These are the three roles that Floyd plays in operating WORV/WJMG. In this type of circumstance, where an owner is wearing several "hats," Mr. Giddens testified, that in forming an appraisal, it is germane to construct a cash flow model that reflects the new owner's position and the other personnel hired to operate the station (Tr.1390). Mr. Giddens testified that payment of additional salaries would be necessary to operate WORV/WJMG (Tr. 1391). Mr. Giddens estimated that approximately $58,000 a year in salaries would be necessary for a new owner to replace Floyd (Tr. 1391). Therefore, to prepare an accurate appraisal, $58,000 in expenses would have to be factored into the methodology (Tr. 1391-92). If this amount is factored into the cost estimates for the stations, the cash flow would go from positive to negative (Tr. 1391). According to Mr. Giddens, if a station has a negative cash flow, an appraiser cannot use a "cash flow" methodology to predict or estimate the value of the station (Tr. 1392).

35. Therefore, the final appraisal value, assuming a sale on terms, was $270,000 (Tr. 1428). Mr. Giddens arrived at a cash sale range of $200,000 to $216,000 by multiplying $270,000 by a 20% discount (Tr. 1429).

Site Availability Issue

36. Floyd states that on or about March 15, 1988, he travelled to Baldwin County, Alabama, to locate a suitable site upon which to construct a broadcast tower for his proposed Pensacola station (Floyd Phase II, Ex. 3, p. 1). Prior to that time, he learned from counsel that he would need to deal directly with the site owner or his authorized representative, and reach a meeting of the minds with the site owner or his agent concerning key sale or lease terms, such as the exact location and size of the site, the expected sale price, and any other conditions the owner might have concerning the sale (Floyd Phase II, Ex. 3, p. 1).

37. Floyd located several parcels of property which had signs on them indicating that they were available for purchase and physically inspected several of those parcels (Floyd Phase II, Ex. 3, p. 1). This included a parcel advertised for sale through Century 21 Coastline, Inc., and he called Mr. Archie Holloway at Century 21 to obtain additional information regarding the property (Floyd Phase II, Ex. 3, p. 1-2).

38. Floyd informed Mr. Holloway that he was planning to apply to the Federal Communications Commission for a new radio station, and that he was trying to locate property upon which to build a broadcast tower if his application was granted (Floyd Phase II, Ex. 3, p. 2). Floyd told Mr. Holloway that he would need approximately five acres of land, and asked him about the parcel that he had seen advertised (*Id.*). Floyd needed a piece of property 700 feet on a side (Tr. 1336). Floyd learned that the parcel was only two acres, but that an adjacent two-acre parcel that Holloway owned himself also would be available (*Id.*).

39. Floyd and Mr. Holloway established a purchase price of $22,000 for the property and also agreed upon payment terms. Mr. Holloway told Floyd that he would prepare the necessary documentation and subsequently Floyd received two preliminary purchase contracts together with a cover letter dated March 18, 1988 (Floyd Phase II, Ex. 3). The contracts were preliminary because they were in the form of offers that were subject to review and acceptance by the property owners (Floyd Phase II, Ex. 4).

40. Mr. Holloway anticipated that Floyd would sign the contracts and return them to him within a reasonable amount of time so that his offer could be reviewed and considered (*Id.*). Mr. Holloway did not advise Floyd that the contracts needed to be signed by a particular date, but he did inform Floyd that he could not hold the property unless Floyd submitted a written offer (*Id.*). The contracts were never signed (Floyd Phase II, Ex. 3). Floyd was to make a good faith deposit by March 30, 1988 (Tr. 1344, 1351). Floyd then certified that he had reasonable assurance of the availability of his site (Floyd Phase II, Ex. 3, p. 3). He did not make the deposit (Tr. 1352). He later secured an alternative transmitter site (Floyd Phase II, Ex. 3, p. 4), and amended his proposed site on May 23, 1988 (Floyd Phase II, Ex. 3, p. 5).

Miracle Radio, Inc.

41. Miracle is a Florida corporation with two classes of stock (Miracle Ex. 1, p. 1). The corporation is authorized to issue 500 shares of Class A voting stock and 500 shares of Class B non-voting stock (Miracle Ex. 1, p. 3). Gerald Don Schroeder is President, a director and owns 75 shares of Class A voting stock, which represents all of the company's outstanding voting stock (Miracle Ex. 1, p. 1). His wife, Gail Rose Schroeder, is secretary/treasurer and a director of Miracle, but owns no shares of stock in the corporation (*Id.*; Tr. 713). Frederic G. Levin owns 25 shares of Class B non-voting stock, but is neither an officer nor a director of the corporation (Miracle Ex. 1, p. 1).

42. *Diversification.* Miracle is licensee of daytime only standard broadcast station WSWL(AM), Pensacola, Florida (Miracle Ex. 3, p. 1). Neither Miracle, nor any of its principals have any other current interest or connection with any other mass media (*Id.*).

43. In the event Miracle's application for construction permit is granted as a result of Miracle's comparative superiority after a comparative hearing, and not through a settlement and not as the result of the award to Miracle of a "Daytimer Preference" as described in *Memorandum Opinion and Order*, 59 RR 2d 1221 (1986), Miracle, Gerald Don Schroeder and Gail R. Schroeder will divest themselves of any and all media interests and any other connections they may have, including WSWL(AM), prior to the initiation of program tests by the FM station (*Id.*). However, in the event the construction permit is awarded to Miracle based on its comparative superiority after a comparative hearing in which part of the comparative superiority is based upon a grant of a Daytimer Preference, pursuant to *Memorandum Opinion and Order, supra,* the applicant, Gerald Don Schroeder and Gail R. Schroeder will divest themselves of WSWL(AM) within three years after the initiation of program tests by the FM station (*Id.*; Tr. 458).

44. Miracle's non-voting shareholder, Frederic G. Levin, holder of a 25% non-voting interest in the applicant has an interest in Blab Network, Inc., which furnishes programs to cable television systems in the Pensacola area, and to other areas (*Id.*, pp. 1, 2). His wife and children also have ownership interests in Blab Network, Inc. Gerald Don Schroeder hosts a weekly two hour cable television program distributed by Blab Network, Inc. (*Id.*, p. 2).

45. In the event Miracle's application is granted based upon Miracle's comparative superiority after a comparative hearing, and not through a settlement, Mr. Levin and his wife will divest themselves of any interest in or connection with Blab Network, Inc., and Mr. Schroeder will terminate his cable television program prior to the initiation of program tests (*Id.*, p. 2).

46. Miracle's voting shareholder, Gerald Don Schroeder, and its non-voting shareholder, Frederic G. Levin, have been life-long friends (Tr. 490; 86). Mr. Levin has been heavily subsidizing the operation of Station WSWL(AM) (Tr. 494-95), and has a reciprocal trade agreement with respect to Levin's Blab Network (Tr. 495-96). Mr. Levin and Mr. Schroeder have been involved in numerous business endeavors together over the years, such a Chicks Bar-B-Q (Tr. 505), the record business (Tr. 500), and the nightclub business (Tr. 504-06) ("Papa Don Productions") Tr. 509). Mr. Levin has a history of providing personal loans to Mr. Schroeder (Tr. 516) and loaned him money to begin utilizing CNN Radio at WSWL(AM) (Tr. 517).

47. After deciding to retain counsel for Miracle's FM station application for Pensacola, Mr. Schroeder approached Mr. Levin about financing the application (Tr. 519). Mr. Schroeder discussed the budget for prosecuting the application (Tr. 519) and how much it would cost for the entire project (Tr. 519).

48. Miracle's bills are being paid directly by Mr. Levin (Floyd Ex. 6). Mr. Levin is given copies of the bills and he writes the checks directly to the payees (Tr. 526). Mr. Levin became an owner of Miracle (which owns WSWL(AM)) when Miracle's attorney was hired (Tr. 585-86). Mr. Levin also is paying expenses for Station WSWL(AM). Mr. Schroeder admitted that WSWL(AM) would not have stayed on the air without Mr. Levin's assistance (Tr. 531). At his deposition, Mr. Schroeder testified that Mr. Levin has paid 90% of the station's expenses (Tr. 532-34). He now believes that Mr. Levin has been paying 50-60% of the expenses (Tr. 532). Mr. Schroeder discusses WSWL(AM)'s operation with Mr. Levin. He lets him know how the station is doing (Tr. 587). Mr. Schroeder discussed the change of WSWL(AM) to CNN Radio with Mr. Levin before it was undertaken (Tr. 88, 593). Mr. Schroeder also discussed the need for WSWL(AM) to change transmitter sites in 1990 (Tr. 592) and Mr. Levin gave him the money to buy the property (Tr. 592).

49. With respect to the FM application, Mr. Schroeder keeps Mr. Levin informed about the status of the application. He told him of the designation of the case for hearing (Tr. 594). He was told how many applicants are involved in the hearing (Tr. 596), the fact that issues were enlarged against a competitor (Tr. 597), and Miracle's overall standing in the case. Mr. Levin's law firm filed Miracle's corporate amendment with the State of Florida (Tr. 604; Floyd Ex. 8), and his law firms's secretary typed up Miracle's corporate resolution (Tr. 603, 759). Mr. Levin was present at the special stockholders meeting (Tr. 608-9; Floyd Ex. 10). Miracle entered into an option agreement with Donovan Realty for a site known as Deer Pine Acres (Tr. 618). Mr. Levin paid the payment for the initial option to purchase in 1988 (Tr. 619), and made another payment in the Fall of 1990 (Tr. 619). Mr. Levin directly paid for the

renewal of the option for the land on behalf of Miracle (Floyd Ex. 13). In Floyd Ex. 13, Mr. Levin stated that he represents Miracle (Floyd Ex. 13). Mr. Levin sent a new agreement to Mr. Donovan in October 1990 (Tr. 654). A copy of the new agreement was sent to Mr. Schroeder by Mr. Levin (Tr. 655). Mr. Levin has been involved in conference calls with FCC legal counsel (Tr. 637), and corresponded with him on discovery matters (PRP Exs. 18, 19, 20).

50. Gerald Don Schroeder will serve as general manager of Miracle's proposed station. He will work full time, a minimum of 40 hours per week as general manager. Unless Miracle still is licensee of WSWL(AM) (formerly WPFA(AM)), Pensacola, Florida, pursuant to the FCC's daytimer preference policy, Mr. Schroeder will terminate any other employment or business interests he may have, prior to the commencement of program tests by the new FM station. If Miracle is still licensee of WSWL(AM) pursuant to the FCC's daytimer preference policy, Mr. Schroeder will work not more than 20 hours per week at WSWL(AM) (Miracle Ex. 2).

51. As general manager of the proposed station, Mr. Schroeder will oversee all aspects of the operation of the station. All department heads will report to him. Mr. Schroeder's responsibilities and duties will include but will not be limited to: (Miracle Ex. 2).

(1) Overall management of station operation and personnel, including supervisory staff;

(2) Formation and implementation of personnel policies;

(3) Formation and implementation of station's EEO program, including policy dissemination, recruitment, and training;

(4) Management of the financial affairs of the station; and

(5) Ensuring compliance with all FCC Rules and Policies.

52. Mr. Schroeder has past broadcast experience as general manager and principal stockholder of WSWL(AM) since 1981 (Miracle Ex. 2; Tr. 447). He was an announcer at WNVY(AM), Pensacola, Florida in 1965. He was an announcer at WBSR(AM), Pensacola, Florida from 1962 to 1964. He was an announcer at WMAK(AM), Nashville, Tennessee in 1962. He was an announcer at WKDA(AM), Nashville, Tennessee from 1960 to 1962. In 1961, he was an announcer at WATE(AM), Knoxville, Tennessee (Miracle Ex. 2).

53. Mr. Schroeder has resided within the community of license, Pensacola, Florida; from 1940 to 1959; from 1962 to 1972; and from 1979 to the present. From 1977 to 1979, he resided in Pensacola Beach, Florida, which is within the predicted 3.16 mV/m contour of the proposed station. Mr. Schroeder has lived in the service area for 44 of the last 52 years. Forty-two of these years have been spent living within the community of license.

54. Mr. Schroeder has been involved in civic activities within the proposed community of license and the proposed service area as follows: (Miracle Ex. 2)

- East Brent Baptist Church - member since 1990;
- First Baptist Church - 1940-1959, 1977-1990;
  - Member - 1950-1959 and 1977-1990
  - Sunday School teacher - 1977-1979
- Pensacola Chamber of Commerce - member since 1981 - attended meetings, helped promote functions, attended functions;
- Optimists Club - not a member, sold Christmas trees, 1982-1985, attended several meetings and functions, since 1981;
- Waterfront Rescue Mission - supported since 1981 - helped raise funds, telephone solicitor, personally contributed funds, promoted a dog show to raise money, negotiated to secure transmitter for a South American short wave radio station for a missionary, donated appliance, clothing and cash, attended all (except two) banquets;
- Loaves and Fishes Soup Kitchen - donated funds and solicited funds, 1981-1989;
- Naval Air Station - helped solicit funds for Navy relief fund, 1991;
- Human Relations Board of City of Pensacola - since 1981 - solicited funds;
- Worked with Marine Aviation Training Group to raise funds for crippled children's home, 1990-1991;
- Invited to be guest speaker, encouraging young people not to use drugs, pick good friends, etc., at Longleaf Elementary School, Pensacola, 1991; Brentwood Middle School, Pensacola, 1990;
- Guest Speaker, Perdido Baptist Church, approximately 1987; Holy Cross Episcopal Church, approximately 1985; and Full Gospel Businessmen Fellowship Meeting, approximately 1982;
- Participated in right-to-life demonstration (Passive), 1991;
- New Hope Home - supported, since 1981, guest speaker, 1982;
- Waterfront Rescue Mission Chapel - guest speaker, 1984;
- Downtown Improvement Board - since 1988 - supported activities, attended functions, promoted activities; and
- Crippled Children's Home - entertained children, 1990;

55. *Auxiliary Power.* Miracle proposes to install an auxiliary power source to insure the continuation of operations of the FM station in the event of an interruption of regular power (Miracle Ex. 5).

56. *Daytimer Preference.* Miracle is licensee and owner of daytime standard broadcast station WSWL(AM) (Formerly WPFA(AM)), Pensacola, Florida. Miracle has owned and operated WSWL(AM) continuously since 1981. Gerald Don Schroeder, Miracle's 100% voting stockholder, has devoted more than 20 hours per week to the operation of

WSWL(AM) since 1981. Miracle's application in this proceeding was filed March 24, 1988; so Miracle was licensee of WSWL(AM) for more than three years prior to the filing of Miracle's application for a construction permit for the FM station (Miracle Ex. 4).

57. In the event the construction permit in this proceeding is awarded to Miracle based on its comparative superiority after a comparative hearing, in which part of the comparative superiority was based upon the ownership of WSWL(AM), pursuant to the Commission's Daytimer Preference policy, Miracle will divest itself of WSWL(AM) within three years after the initiation of program tests by the FM station (Miracle Ex. 4).

Misrepresentation by Donovan and Subornation Issues

58. At the hearing session held October 29, 1991, John C. Donovan, Jr. ("Donovan") testified that as the broker of Donovan Realty of Alabama he handled the transaction regarding Miracle's transmitter site (Tr. 902). According to Donovan, Miracle signed a lease option agreement in March of 1988 (Tr. 911). Mr. Schroeder delivered the first two payments (Tr. 916), and all other payments through April of 1990 were made by Levin (Tr. 915, 920). On April 25, 1990, Donovan sent a notice to Levin, with carbon copy to Mr. Schroeder (Floyd Ex. 14), indicating that the lease had expired on March 20, 1990 and requested that he get in touch with him. He got no response to the letter. Subsequently in the latter part of October of 1990, Donovan received telephone calls from attorney Christopher J. Holt and Mrs. McGreevy inquiring about the site (Tr. 930, 934-35). Although he did not get a response from Levin or Mr. Schroeder, Donovan did not place the property back on the market, nor did he place any signs on it (Tr. 930). When he got the inquiry about the property he called Levin to see what Miracle's intentions were regarding the site (Tr. 934). Levin requested that the contract be sent (Tr. 936). Donovan did so and in turn received the executed contract (Tr. 940).

59. Following the October 29, 1991, hearing session two individuals who owned land abutting Miracle's site submitted affidavits to the effect that the parcel of land in the fall of 1990 was available for purchase and that there were "For Sale" signs placed on the property. Hence the specified issues.

60. Subsequently, at the October 20, 1992 hearing session Mr. Schroeder testified that he had no knowledge of any "For Sale" signs being placed on Miracle's proposed site in 1990 (Miracle Ex. 10). He also denied having suggested to Donovan to testify a certain way (*Id.*). Levin testified that he had never seen Miracle's proposed site and that he at no time had any negotiations with Donovan (Miracle Ex. 11).

61. Donovan testified that when he called Levin to tell him about Holt's inquiry, Levin merely requested that the sale contract be mailed to an address he specified (Tr. 934, 936). Donovan did state that in the interim following the expiration of the Miracle lease he encountered abutting owner, Joseph Michael Dewberry ("Dewberry"), on the proposed site and directed him to remove the deer stands Dewberry had placed on the property (Tr. 1470). Donovan acknowledged that he may have informed Dewberry that the Miracle lease had expired (Tr. 1472), but also stated that he was not interested in doing business with Dewberry (*Id.*). Donovan thought that he may have also told the other abutting owner that the lease had expired (Tr. 1476). Donovan indicated that he had written to Levin following the expiration of the lease because he received no response to his letter sent to Mr. Schroeder and was aware that Levin had been sending the monthly checks on the lease (Tr. 1483).

62. Donovan stated further that he had done nothing to market the Miracle site, but allowed that his wife may have placed "For Sale" signs on the property (Tr. 1488). He alleged that he had never discussed this with his wife (*Id.*). However, having been confronted with his earlier declaration (PRP Ex. 10) that unknown to him his wife did place "For Sale" signs on the property he stated that he did speak with her and she thought that she may have placed the signs on the parcel (Tr. 1486, 1488). Donovan averred that he signed the declaration based on his wife telling him that she had placed the "For Sale" signs, but that afterwards his wife told him that she wasn't sure about placing the "For Sale" signs (Tr. 1488). At her deposition, Mrs. Donovan stated that she never told her husband that she put the signs on the property but that she did tell him that she wasn't really sure whether she placed the signs (Miracle Exs. 28, 29, 30, 34).

63. Dewberry testified that for some time he had an interest either in acquiring a portion of Miracle's proposed site in order to expand his adjacent parcel of land, or in acquiring it for others he knew to be interested in acquiring it. To those ends, he inquired of Donovan from time-to-time about the property (Tr. 1588). Prior to the time the land was optioned to Miracle, Donovan told him that it was available (Tr. 1589). Thereafter, Dewberry became aware of Miracle's lease/option in the course of a telephone conversation with Donovan which was thought by the witness to have occurred in 1989 (*Id.*). When Dewberry next encountered Donovan, Donovan directed him to remove deer stands that Dewberry had placed on the property. Donovan said that the stands impaired the value of the property which had become available again because Miracle's lease/option had been "dropped" (Tr. 1590). Dewberry disfavors using the site as a location for a tower and has registered his dissatisfaction with local officials (Tr. 1591).

64. John Vaughn ("Vaughn") testified that he has known Donovan for many years (Tr. 1597) and that he personally witnessed Mrs. Donovan, placing the "For Sale" signs on the property in early October of 1990 (Tr. 1598). He approached Mrs. Donovan who told him that the lease-option had run out, that the land was available for sale, and that the price was negotiable (Tr. 1599). Vaughn asked Mrs. Donovan to provide him with written information on the property; the information appeared in his mailbox shortly thereafter (*Id.*; PRP Ex. 15). Vaughn also talked to Donovan about the property; he was told that Miracle had lost its lease and that the property was again available, but he couldn't say whether the "For Sale" signs were up (Tr. 1602).

65. Attorney Holt testified that in October of 1990 he had contacted Mary Donovan, the reputed owner of the site, and John Donovan (Tr. 1543) and learned from Mary Donovan that she recognized the name of Levin and thought that a contact had been made by him (Tr. 1545) and that she believed that the lease on the parcel had expired (Tr. 1546). From John Donovan, Holt learned among other things that Levin told him that he was not in a position to renew the lease option because the FCC had not as yet granted the construction permit (Tr. 1550).

66. Following his first telephone conversation with Donovan, Holt prepared a rough draft of an affidavit that he intended to use in connection with a motion seeking a

site issue against Miracle (Tr. 1561; PRP Ex. 12). He then placed another call to Donovan advising him that he intended to file such a motion and solicited Donovan's assistance in furnishing the requisite declaration (Tr. 1561). Donovan, without first considering the content of the declaration, refused, citing his desire to avoid angering Levin and his reluctance, in any event, to become involved (PRP Ex. 11).

Concealment of Documents Issue

67. The Joint Production Motion filed February 12, 1991 directed the production of the following documents:

> Request No. (1) All documents that relate to the formation of the Applicant or to any of its successors, including but not limited to all documents that identify any person participating in such formation or that describe any proposed structure for the Applicant or any of its predecessors or successors, including but not limited to telephone diaries, notes, records of conversations or correspondence of principals evidencing contacts concerning the preparation or organization of the Applicant's application, or correspondence relating thereto.
>
> (2) All documents that relate to any meetings, formal or informal, of the Applicant, its partners, limited partners, officers, directors, stockholders, and any other persons concerning the application or the proposed station, both preceding and following the filing of the Applicant's application.
>
> (3) All documents reflecting any contacts or communications between or among the Applicant's principals regarding the formation or composition of the Applicant and the prosecution of its application.
>
> (5) All documents that relate to any past, present or future plan or right of any person to purchase or otherwise acquire any interest or future interest in the Applicant (*e.g.*, stock options, stock subscriptions or loan agreements that provide for the conversion of debt to equity; or the pledge of voting stock as security for a loan) and all documents that relate to any oral understanding that may result in a change of ownership of the Applicant.
>
> (6) All documents that relate to the past, present, or future organizations, ownership, distribution of profits, management, or functioning of the Applicant or of any corporation or partnership that is a party to its application, including but not limited to limited partnership agreements, articles or certificates of incorporation, by-laws, shareholder agreements, proxies, partnership agreements, subscription agreements, stock certificates, and operational agreements, whether or not now in effect.
>
> (7) All documents relating to the payment of any compensation, commission, benefits, bonus or consulting or management fees by the Applicant in the event its application is granted or a settlement agreement effectuated, and any documents relating to the management or operation of the proposed station, including the proposed existence of any consulting relationship, after grant of its application.
>
> (10) All documents reflecting any contacts or communications by or between the Applicant or any of its principals and the owner or agent for the owner of the transmitter site specified in the applicant's application.
>
> (13) Copies of all cancelled checks, receipts, ledgers, notes and other documents evidencing loans, gifts or contributions or funds to the Applicant (whether directly or indirectly including loans, gifts or contributions of funds to principals for the purpose of underwriting any payment or future payment to the applicant) by any person, including checks evidencing payment of the Applicant's expenses.

68. By letter dated February 1, 1991, Levin advised Miracle's then FCC attorney Smithwick that he had reviewed the Motion and that he was instructing Mr. Schroeder to search his files for responsive documents (PRP Ex. 18). Levin, an experienced trial attorney, also informed Smithwick that "if he [Schroeder] has any trouble understanding [the document production request] I will go through it with him." (*Id.*). Levin concluded by advising Smithwick that "we have no objection" to the documents requested (*Id.*). Miracle failed to produce a variety of documents called for by the Joint Production Motion.

69. *Transmitter Site Documents.* In response to a *subpoena duces tecum* served by the parties on Donovan, a variety of Miracle documents surfaced that revealed Levin's participation in transactions involving Miracle's proposed transmitter site. Those documents included: (a) a letter dated March 16, 1989, from Levin to Donovan with a copy to Mr. Schroeder (Floyd Ex. 13); (b) a letter dated April 25, 1990, from Donovan to Levin with a copy to Mr. Schroeder (Floyd Ex. 14); (c) a letter dated October 26, 1990, from Levin to Donovan (Floyd Ex. 16; Tr. 664); and (d) a letter dated October 31, 1990, from Donovan to Levin (Floyd Ex. 18). The foregoing documents were not produced by Miracle until after Donovan's records were subpoenaed by Miracle's opponents (Tr. 644-45).

70. When questioned specifically about Floyd Ex. 13, Mr. Schroeder conceded that he "must have" received a copy of the letter from Levin but claimed that he did not remember reading it (Tr. 632-33). Mr. Schroeder testified that he typically (a) destroyed or discarded all Miracle documents except those that belonged in the applicant's public inspection file, or (b) forwarded them to Miracle's allegedly passive principal Levin (Miracle Ex. 15, p. 2; Tr. 1729-30).

71. Levin claimed that his copy of Floyd Ex. 13 was misfiled by a temporary secretary after the letter was written (Miracle Ex. 16, p. 1). Consequently, Levin asserts that when the time came to produce the letter, he instructed his regular secretary, Diane M. Moore ("Moore"), to search the files, but the letter was not found (*Id.*). Levin avers that he ultimately located his copy of the letter -- after the parties had subpoenaed Donovan's files -- when his secretary looked and "found it in this real estate file." (Tr. 1630). Miracle supplied written testimony from Moore to corroborate his claim. Moore avers that Levin:

> received a request for documents in the matter before the Federal Communications Commission. The request was turned over to me by Mr. Levin and I was told to get everything together to sent it (sic) in compliance with this request to Mr. Gary Smithwick.

> I went through all of the Miracle Radio files and stayed in constant contact with Mr. Smithwick and sent everything to him that was in any way connected with the request.

(Miracle Ex. 17, p. 1). Moore further asserts that Floyd Ex. 13 "was apparently filed in a property file rather than a Miracle Radio file." (Miracle Ex. 17). Moore claims, "I did not see the letter of March 16, 1989, to Mr. Donovan." (Miracle Ex. 17, p. 2).

72. *Attorney Invoice Documents.* The Joint Production Motion required Miracle to produce a variety of documents concerning its corporate formation and collateralization. Miracle Ex. 19 contains an invoice dated May 9, 1988, on the stationery of Levin's law firm and addressed to "Mr. Gerald Don Schroeder, Radio Station WPFA, 4151 North Pace Blvd., Pensacola, Fl 32505." (Miracle Ex. 19, p. 24). Attached to that invoice is a "fees and costs sheet" dated May 20, 1988, and a copy of a check from Levin to his law firm in the amount of $61.19 (Miracle Ex. 19, p. 25). Neither the law firm invoice nor the related fees and costs sheet were ever produced by Miracle in response to the Joint Production Motion. Instead, they were first discovered when a *subpoena duces tecum* was served on the administrator of Levin's law firm after the conclusion of the first hearing session in this proceeding.

73. Mr. Schroeder claims that he cannot recall having received the invoice from Levin's law firm (Miracle Ex. 15, p. 2, ¶ 5). He asserts, if he had received it he simply would have sent it along to Levin because he never keeps copies of such documents (*Id.*; Tr. 1729, 1769). Mr. Schroeder further claims that if he had located the invoice and related materials in the course of document production, he "would have had no reason to believe this document was incriminating." (Miracle Ex. 15, p. 2, ¶ 6).

74. Levin concedes that he received the law firm invoice (prepared by one of his law firm's attorneys, Mr. Monroe) presumably after it was forwarded by Mr. Schroeder (Miracle Ex. 16, p. 3, ¶ 9). He states that "no copy of the bill... was kept in the Miracle Radio filing cabinet," and that the invoice documents "were not found during the process of gathering documents for the document production." (*Id.*). Miracle offers no explanation for why the invoice documents were not produced from Monroe's files pursuant to the Joint Production Motion, which expressly directed the parties to furnish "all documents known or available to it or under its control, or reasonably available to its agents." (PRP Ex. 17, p. 6). In his letter to Smithwick dated February 5, 1991, Levin promised that he would have Monroe "send you a photocopy of his files on Miracle Radio..." (PRP Ex. 19). That letter indicates that a copy was sent to Monroe conveying these instructions (*Id.; see Memorandum Opinion and Order,* FCC 93M-91, released March 5, 1993).

75. On September 11, 1991, Floyd filed a "Motion to Compel Production of Documents" requesting the production of Monroe's attorney invoices.[4] Levin contends that the invoice and related documents requested by Floyd's September 11, 1991 Motion to Compel were not produced because the legal work that Monroe performed on Miracle's articles of incorporation, by laws, stock pledges, resignation of a corporate director, conferences with Mr. Schroeder and Smithwick, filings with the Florida Secretary of State, etc., "had [n]ever been done by the law firm for Miracle Radio..." Instead, Levin asserts, all such legal work was done for him personally (Miracle Ex. 16, p. 3, ¶10). This claim is confirmed, Levin avers, by the fact that he paid the fees and costs with his personal check (*Id.*, p. 4, ¶11).

76. *Levin-Smithwick Letters.* By memorandum, dated March 11, 1991 Miracle identified, *inter alia,* three allegedly privileged letters that Levin had written Smithwick in February of 1991 (PRP Ex. 15, p. 5). In asserting that privilege, Miracle represented to its opponents that each of the letters constituted a protected communication "providing information to respond to discovery, which included confidential information." (*Id.*).

77. During the hearing session held on January 27, 1993, Levin testified that he was not certain whether he had ever corresponded with Smithwick (Tr. 1632). But after being shown the applicant's March 11 memorandum, Levin conceded that Miracle had claimed attorney-client privilege for three letters that he had written (*Id.*). When asked whether the letters contained any confidential information, Levin opined that they probably did not. Instead, he characterized them as likely being transmittal letters (Tr. 1632-33). Consequently, he directed Miracle's counsel to produce the documents to the Court (Tr. 1719). Copies of those letters, together with other documents not previously produced, were subsequently made available to PRP, Floyd and ADX. *See Memorandum Opinion and Order,* FCC 93M-91, released March 5, 1993.

78. In the first transmittal letter from Levin to Smithwick dated February 1, 1991, Levin recites: (a) that he had reviewed the Joint Production Motion; (b) that by a copy of the letter he was instructing Mr. Schroeder to review his files for responsive documents; and (c) that if "he [Schroeder] has any trouble understanding the [document production request] I will go through it with him." (PRP Ex. 18). Moreover, Levin instructed Smithwick concerning Miracle's position on the motion, informing him that "we have no objection" to the document request (*Id.*). In a transmittal letter from Levin to Smithwick dated February 5, 1991, Levin advised Smithwick that he would have Monroe send him "a photocopy of his files on Miracle Radio." (PRP Ex. 19). The letter also indicated on its face that a copy was being sent to Monroe to provide him with these instructions (*Id.*). In a letter from Levin to Smithwick dated February 19, 1991, Levin disclosed that he had been talking with "one of the other applicants" concerning its litigation strategy against Miracle (PRP Ex. 20). Levin then predicted that the other applicants would seek to attack his financial control over Miracle and his censure for ethical violations by the Supreme Court of Florida. Enclosed with the letter were materials that Levin thought would be useful in countering such a strategy (*Id.*). Levin at hearing spontaneously agreed to release the documents because he voluntarily waived the former privilege: "And so I waive it, and whoever has those letters, if you would forward those on to the court, because I can assure you there was nothing more in there other than transmittal, and if there was, I want you to have it because I am

[4] Floyd's Motion was denied as untimely filed by *Memorandum Opinion and Order,* FCC 91M-2917, released September 24, 1991. Despite the fact, Miracle avers in its direct written case that it read the motion and concluded that the Monroe invoice and related documents did not come within Floyd's motion (Miracle Ex. 16, p. 3).

not trying to withhold anything." Miracle maintains that up until Levin waived the attorney-client privilege, the documents came within the protection of privilege.

79. *The Security Documents.* At the hearing session held on October 2, 1991, Mr. Schroeder testified that his financial arrangement with Levin was strictly a "handshake agreement." (Tr. 551). Upon cross-examination leading up to that claim, Mr. Schroeder testified that there was no promissory note executed (Tr. 549, 550).

80. After Mr. Schroeder's testimony during that initial hearing session, and in connection with the instant document concealment issue, the Presiding Judge granted PRP's First Motion for Production of Documents, filed October 15, 1992 (*Memorandum Opinion and Order*, FCC 92M-1037, released November 6, 1992.) In its Motion, PRP had requested that Miracle examine the Joint Document Production Motion, and furnish any yet-unproduced documents which are responsive to that Motion. In response to PRP's Motion, Miracle represented through its counsel that it would conduct a complete review of the Joint Production Motion to ensure that it had complied with its obligations thereunder (Tr. 1648). No documents relating to Miracle's financial arrangement with Levin were subsequently produced.

81. During the hearing session held on January 27, 1993, Levin was examined by the parties concerning the corporate legal work that Monroe had performed on the applicant's behalf (Tr. 1635-1638). As a result of that examination, it was revealed for the first time that Mr. Schroeder's financial arrangement with Levin was more than simply the handshake agreement Mr. Schroeder had testified to. Specifically, it was discovered that Mr. Schroeder had executed a demand Promissory Note and related Uniform Commercial Code ("UCC") security instruments to secure Levin's loans to the applicant (Tr. 1639-41, 1645-46, 1650, 1653), and that Miracle had not produced those financing documents to the other parties.

82. On February 4, 1993, after the record had been closed, Miracle produced for the first time the various security documents revealed during Levin's January 27 hearing testimony (*Memorandum Opinion and Order*, FCC 93M-145, released April 5, 1993). Those documents included:

(a) PRP Ex. 21, a Promissory Note dated September 1, 1991, in the amount of $365,000 and made payable upon demand to Levin;

(b) PRP Ex. 22, a Security Agreement dated September 1, 1991, together with a Corporate Certification dated September 26, 1991, in which Schroeder conveyed to Levin a security interest in all of Miracle's physical assets; and

(c) PRP Ex. 23, a UCC Financing Statement filed March 25, 1992, listing Miracle's physical assets held as collateral by Levin.

83. Attached to the Security Agreement is a Corporate Certification that was executed by Gail R. Schroeder in her capacity as secretary of Miracle and notarized by Levin on September 26, 1991 (PRP Ex. 22). That certification recites that a meeting was held by the Board of Directors of Miracle on August 21, 1991, at which time it was resolved "that all notes and other evidences of the debt of the Corporation to Frederic G. Levin... shall be signed by Gerald Don Schroeder." (*Id.*).

84. Mr. Schroeder recalled Mr. Monroe having drawn up a UCC filing and a note (Tr. 1736, 1765). He did not keep a copy of it and had forgotten about it (Tr. 1738). Mr. Schroeder never thought of the documents in terms of the document production (Tr. 1765). Mr. Schroeder could not recall the date that the UCC statement or the note was signed (Tr. 1774).

85. During Mr. Levin's testimony, when asked about the basis of his protection regarding the loans he has made to Miracle Radio, Mr. Levin noted the existence of a UCC filing (Tr. 1639). Mr. Levin stated the "[i]t was turned over to you all some time ago" and he assumed that it had been produced because it had been mentioned throughout the testimony (Tr. 1639). Mr. Levin further stated that he did not understand what the UCC filing was beyond a lien against the equipment at the station (Tr. 1640).

86. As they had done earlier with regard to Mr. Monroe's representation of Mr. Levin, Mr. Levin asked Mr. Monroe to research the issue of a possible UCC filing on the basis of a "transfer of production" as compensation for Mr. Monroe's efforts (PRP Ex. 16). Mr. Monroe's work culminated in a note and the UCC filing (Tr. 1646). Mr. Levin thought that the parties had known about the note and UCC filing for over a year and a half and did not believe that he was required to turn these items over (Tr. 1646). The documents were produced by Miracle Radio shortly thereafter on February 4, 1993. (Stipulation accepted in *Memorandum Opinion and Order*, FCC 93M-145, released April 5, 1983.)

87. *Additional Documents.* The joint competitors claim that Miracle Radio concealed additional unidentified documents and claim that Miracle Radio is compelled to produce still more documents.

88. Captain C. Flack Logan is the Director of Administration for the law firm of Levin, Middlebrooks, Mabie, Thomas Mayes & Mitchell, P.A. (Miracle Ex. 18, p. 1, ¶ 1).

89. Captain Logan's first involvement with this proceeding occurred in connection with a subpoena that was issued to Levin, Middlebrooks to produce certain documents (Miracle Ex. 18, p. 1, ¶ 4). This subpoena called for records pertaining to Miracle as well as Mr. Monroe (Miracle Ex. 18, p. 1, ¶ 5). Captain Logan gathered the files containing the documents called for by the subpoena and was advised by Mr. Levin to turn them all over (Miracle Ex. 18, p. 1, ¶ 4). Captain Logan then proceeded to turn them over and this was accomplished, without any objection, on August 3, 1992 (Miracle Ex. 18, p. 1, ¶ 4).

90. Captain Logan was never told by any member of Levin, Middlebrooks or Miracle to hide or withhold any documents called for by the subpoena (Miracle Ex. 18, p. 1, ¶ 5). Captain Logan was not told that any documents had been previously held back (Miracle Ex. 18, p. 2, ¶ 5). The files were turned over in an "as is" condition (Miracle Ex. 18, p. 2, ¶ 5).

David Earl Hoxeng d/b/a ADX Communications of Pensacola

91. ADX is an individual applicant (ADX Ex. 1).

92. *Diversification.* David Earl Hoxeng has no attributable interest in any medium of mass communications. He is employed on a part-time basis for Station KTSA(AM) and KTEM(FM), San Antonio, Texas as marketing manager, and his wife is employed by Station KTEM as local

sales manager. Both Mr. Hoxeng and his wife have timely committed to discontinue their involvement with these stations if Mr. Hoxeng's application is granted.

93. ADX has proposed no integration in this proceeding.

94. *Auxiliary Power.* ADX will install auxiliary power facilities in order to permit continuous broadcast operations in the event of a power failure (ADX Ex. 3).

Comparative Coverage

95. The total areas and populations within each applicant's proposed 1 mV/m contour is as follows:

Applicant	Area (Sq. Km .)	Population
PRP	4173	325,750
Floyd	6391	368,914
Miracle	5510	347,160
ADX	4327	330,029

96. None of the applicants provides service to unserved or underserved areas.

CONCLUSIONS OF LAW

Pensacola Radio Partners

97. PRP has at all times proposed 100% full-time integration. When the McGreevys won a Florida lottery awarding them a liquor license, PRP advised the FCC by amendment that the McGreevys would devote no more than five hours per month each to the operation of the liquor store ("Panama Mac's") and to divest themselves of their interest if more than five hours per month were required. At hearing the McGreevys revised their commitment to the operation of the liquor store from five to fifteen hours per month each together with a pledge of divestiture should there be a need for additional time.

98. The competing applicants see the PRP proposal as fatally flawed in that (1) it constitutes an upgrade; (2) no plan was submitted as to how the McGreevys would accommodate the demands of the store and simultaneously accommodate the demands of their integrated positions; and (3) that the divestiture pledge is incredible in light of the state imposed penalty of $26,000[5] upon sale within three years of acquisition and the duration of the lease for the store premises.

99. The objections are without merit. The PRP proposal does not constitute an upgrade of its application. The revised estimate is based on the actual experience of running the store and is well within the bounds of permissible outside involvement. The record is clear that the liquor store will be run by a sales clerk who is quite capable of ordering and receiving stock, placing it on the shelves and selling it. That is being done now. The combined 30 hours per month estimate is more than sufficient time to permit the McGreevys to maintain control of their investment and still fulfill the integration promises they made to the FCC. There is no Commission precedent wherein the Commission has disallowed integration credit when the applicant limited himself or herself to spend no more than 15 hours per month on outside business and demonstrated that this amount of time was realistic under the circumstances. The McGreevys' promise is specific and is based on actual experience. The cases cited in opposition to this pledge are inapposite.

100. Additionally, the penalty for the premature selling of the liquor license and lease for the store premises are no impediment to the effectuation of the integration promise. The liquor license is considered to be readily negotiable and the purchase price would far exceed the cost of the penalty and would provide adequate funds to pay for the balance of the lease were the McGreevys not able to sublet it.

101. In light of the foregoing, it is clear that PRP is entitled to 100% integration credit.

102. PRP's integration proposal is enhanced by McGreevys' present and proposed residence in the community of license. The McGreevys live in a county contiguous with the city of license. A residence in an area contiguous with the city of license is equivalent to residence in the city of license itself. *See Minority Broadcasters of East St. Louis, Inc.*, 99 FCC 2d 264, 269 (Rev. Bd. 1984) (subsequent history omitted). Full credit for contiguity is given when the community of license is essentially inseparable from the community of residence. *See Joe L. Aldridge*, 6 FCC Rcd 994 (1991). The record shows that the McGreevys have a Pensacola address and almost all of their civic activities involve Pensacola proper. The have no other community to pay allegiance to. "Grand Lagoon," the subdivision they live in, is not a community.

103. PRP's integration proposal is further enhanced slightly by McGreevys' record of civic participation.

104. PRP's integration proposal is also enhanced slightly by Mr. McGreevy's broadcast experience. However, the record does not demonstrate that Mrs. McGreevy's claimed broadcast related experience involved either the operation of a broadcast station or the airing or presentation of programming.

Vernon Floyd

105. *Financial Issue.* At the time Floyd certified his application his estimate of construction, prosecution and three months of operation without revenue cost was $260,527.14. To meet these costs, Floyd asserts that he relied on the sale of his Hattiesburg stations. At hearing he stated for the first time that he also relied on the cash he had on hand to meet the requisite costs. However, no credit can be given for this latter assertion. It has to be discounted. Floyd did not mention the prospect of using cash on hand to finance the construction or operation of his station previously, at the time of his deposition. Furthermore, as of the time of certification there was no written record of a willingness on his part to put up cash to pay his proposed Pensacola station. Additionally, Commission precedent holds that where funding is supplied by an individual rather than an institution, the applicant must show that the person proposing to lend the funds had the necessary financial resources at the time of certification. A balance sheet or a financial statement demonstrating that, at the time of certification, the person had sufficient net liquid assets to meet his financial commitment would be clear evidence to support the certification. *See Northampton Media Associates*, 4 FCC Rcd 5517, 5519 (1989), *recond. denied* 5 FCC Rcd 3075 (1990), aff'd *Northampton Media*

[5] The penalty is actually based on a sliding scale based on revenue, the $26,000 being, therefore, an estimate (Tr. 250-251).

Associates v. FCC, 939 F.2d 1035 (D.C. Cir. 1991). Here, Floyd provided no financial showing of his financial assets and obligations. There is no way to determine to what extent Floyd had pre-existing or ongoing obligations that he had to meet.

106. The only assets Floyd timely committed to utilize to finance the construction and operation of his station were the net proceeds of the sale of his existing radio stations, Stations WORV(AM) and WJMG(FM). In order to validly rely on non-liquid assets, it was necessary for him to have supported his reliance with a "valid appraisal." *Opal Chapell*, 4 FCC Rcd 1215 (1989); *Rose Broadcasting Company*, 68 FCC 2d 1242, 1246 n.9 (1978); *Kaye-Smith Enterprises*, 98 FCC 2d 675, 678, *recon. denied*, 98 FCC 2d 670 (Rev. Bd. 1984), *review denied*, FCC 85-192 (April 19, 1985). Moreover, because net proceeds received by a seller of non-liquid assets normally are less than fair market value, the Commission reduces market valuations by as much as one-third in analyzing their use in conjunction with an applicant's claim to be financially qualified. *Port Huron Family Radio, Inc.*, 5 FCC Rcd 4562 4563 n.5 (1990).

107. Floyd claims that he developed an estimate of the stations' fair market value with the assistance of counsel. This estimate, it is alleged, was based upon figures for comparable stations that had been reported in the trade press and discussions of station values. Based on his discussions with counsel he believed that his stations could be determined by multiplying 9 or 10 times their cash flow or 3 times their gross earnings. However, this testimony has to be discredited because it is self-serving. Floyd did not provide testimony from a corroborating witness. The Commission has held that an applicant's self-serving testimony is not the probative evidence required to establish financial qualification. *See Aspen FM, Inc.*, 6 FCC Rcd 1602 (1991); *Janice Fay Surber*, 5 FCC Rcd 6155, 6158 (1990); *Mableton Broadcasting Co. Inc.*, 5 FCC Rcd 6314, 6317 (1990).

108. Floyd maintains that his pre-filing estimate of the stations' fair market value was supported by a professional appraiser, Ms. Harrison. However, Ms. Harrison specifically disclaimed Floyd's representation that she confirmed his belief of value of the stations.

109. Floyd secured an appraiser on the same day that he certified his financial qualification. However, Ms. Harrison's appraisal is not deemed reliable. She never inspected the station. No adjustments were made to consider the market size, the format, the number of persons served by the stations, its rating, or whether Floyd ever paid himself a salary. Floyd admitted that he does not take a salary and Ms. Harrison testified that knowing that fact itself would have reduced her value of the station. Floyd testified he would pay a station manager $200-$250 per week. Mr. Giddens established that many of these factors in fact affect fair market value of a radio station and felt the value must be reduced to take into account: the stations' format; the costs of replacing Mr. Floyd as general manager, chief engineer, and salesman; and the location of the stations. Also, Ms. Harrison failed to reduce the value of the stations to reflect the amounts that could be realized only from an all cash sale. Mr. Giddens felt that taking these factors into account required an overall valuation of only $200,000. Applying the formula the Commission established in *Port Huron, supra*, and reducing the value of the non-liquid asset by 20%, results in a determination that Floyd's non-liquid assets that can be readily convertible to liquid assets only are in the range of $200,000 to $216,000, which falls short of his anticipated $260,527.14 budget.

110. In light of the foregoing, it is concluded that Floyd at no time actually had the reasonable assurance of adequate funds available to meet his projected costs of his proposed Pensacola station. The financial qualification issue specified against Floyd IS RESOLVED AGAINST Floyd.

111. However, the record does not support a finding of misrepresentation on Floyd's part. To finance his proposal, Floyd needed $260,527.14. He planned to rely on the sale of his two radio stations. Mr. Giddens estimated the value of the stations at $270,000 on terms. However, if a cash transaction were sought the value would be reduced by 20% to $216,000 (see Fndgs, ¶35, *supra*). The record does not show that Floyd was aware of the discount feature in estimating cash transactions. His appraiser certainly was not aware of it. He thought his two stations to be worth a lot more. There is no indication that in fact he believed otherwise. He did not wilfully withhold any information that he should have disclosed. He did not conceal anything from the Commission. Floyd indicated in his application that documentation was in progress. It was an honest mistake. On the day of his certification he was told that his estimate of value was confirmed and that an appraiser was retained to document it. It cannot be seriously maintained that his certification and his statement regarding documentation were lies. The record does not warrant it. Floyd is a Commission licensee of long standing with an unblemished record. The misrepresentation issue IS RESOLVED in his favor.

Site Availability

112. Floyd's original proposed transmitter site consisted of two parcels. The record shows that prior to certification, Floyd contacted the real estate agent who owned one parcel and who represented the owner of the other parcel. Terms were agreed upon and to make the agreement binding, Floyd was mailed real estate contracts for the parcels which were to be returned together with a good faith deposit. At the time Floyd filed his application the contracts were not signed by Floyd. Although Floyd did not have a binding agreement to acquire the proposed site, a binding agreement is not required. *National Innovative Programming Network of the East Coast*, 2 FCC Rcd 5641, 5643 (1987). An applicant is required to reach a meeting of the minds resulting in some firm understanding as to the site's availability. *Genesee Communications Inc.*, 3 FCC Rcd 3595 (1988). An indication by the owner that he has the intention to make the land available satisfies the "reasonable assurance" standard. *Elijah Broadcasting Corp.*, 3 FCC Rcd 5148, 5150 (1988). Floyd has satisfied these requirements as is evidenced by the purchase contracts offered to him. The fact that Floyd did not finalize the deal is of no significance here since Floyd changed his site by an amendment as of right under 47 CFR Sec. 73.3522(a)(6) at which time he amended his proposal to specify his presently proposed site. The site availability and misrepresentation issues ARE RESOLVED in Floyd's favor.

113. *Diversification.* Floyd has proposed to divest himself of all his attributable broadcast interests.

114. *Integration.* Floyd has been found to be financially unqualified. Were it not so ruled, Floyd would have been credited with 100% quantitative integration credit enhanced by his minority status and broadcast experience.

Floyd has never lived in the proposed service area, but more than 25 years ago participated in some civic activities in the proposed service area. However, because of the significant time lapse no credit is given under this factor. *Ruth Payne Carmen*, 1 FCC Rcd 46 (1986).

Miracle Radio, Inc.

115. *Diversification.* Miracle, the licensee of WSWL(AM), Pensacola, Florida, has pledged to divest itself of all media interests, including WSWL(AM) prior to the initiation of program tests by the FM station. The pledge contains a proviso that should Miracle be awarded a daytimer preference then it will in accordance with Commission policy regarding daytimer preference divest itself of WSWL(AM) within three years after the initiation of program tests by the FM station. The pledge also contains a proviso that should Miracle be awarded a grant herein pursuant to a global settlement then its divesture commitment is inoperative. PRP and ADX contend that Miracle's pledge is contingent and therefore deficient under Commission precedent. However, Miracle's pledge is not deemed to be contingent. Under the Commission's *Ruarch* policy, the Commission permits applicants to withdraw divestiture and integration proposals in conjunction with settlement agreements filed up until the date established for the exchange of exhibits in the case. After the exhibit exchange date, the successful applicant will be expected to fulfill its divestiture and integration proposal. *See Memorandum Opinion and Order*, FCC 91-154, released May 15, 1991, 6 FCC Rcd 3403 (1991). (Re: Reform of Comparative Hearing Process to Expedite the Resolution of Cases, General Docket No. 90-264.) By operation of Commission policy, therefore, Miracle's notice that it would withdraw its divesture proposal upon settlement has no significance since the exchange date of exhibits has long since passed.

116. Neither is Miracle's "two prong" proposal to divest deemed contingent. Its proposal is forthright and unequivocal. To deem the proposal contingent would place an applicant seeking a daytimer preference in a no win situation. For if an applicant seeking a daytimer preference only states that he will divest prior to going on the air, he would lose the three year grace period afforded by the granted preference. If the applicant seeking the daytimer preference would pledge to divest in accordance with Commission policy regarding daytimer preference and then fail to qualify, he would in final analysis be charged with a diversification demerit for not making an adequate divestiture pledge. This undesirable result could hardly be the Commission's intent. There is no question herein that Miracle intends to divest itself of WSWL(AM) in accordance with Commission policy and rules, if it wins a grant. *Cf. Second Report and Order, FM Broadcast Assignments*, 101 FCC 2d 638, n.18, p. 647 (1985).

117. Additionally, Mr. Levin and his wife have pledged to divest themselves of any interest in or connection with Blab Network, Inc. and Mr. Schroeder has pledged to terminate his cable television program prior to the initiation of program tests.

118. In light of the foregoing, no diversification demerit will be assessed against Miracle.

119. *Integration.* Miracle is owned 75% by Schroeder (voting) and 25% by Mr. Levin (non-voting). Miracle claims 100% integration credit for the full-time participation of its sole voting stockholder, Mr. Schroeder. The record, however, discloses substantial involvement of Mr. Levin in corporate affairs and as a result, Miracle is entitled to receive only 75% quantitative integration credit for Mr. Schroeder's timely filed proposal of full-time participation.

120. With respect to the existing station owned by Miracle, Mr. Schroeder discussed how the station is doing with Mr. Levin, and discussed the change in the existing station's format and site change with Mr. Levin prior to their undertaking. With respect to the proposed FM station Mr. Schroeder keeps Mr. Levin informed about the status of the application, told him of the designation of the case for hearing, told him how many applicants are involved in the hearing, told him that issues were enlarged against a competitor and kept him informed concerning Miracle's overall standing in the case. Mr. Levin's law firm filed Miracle's corporate amendment with the State of Florida, and his firm's secretary typed up Miracle's corporate resolution. Mr. Levin also was present at the Special Stockholders Meeting. When Miracle entered into an option agreement with Donovan Realty for a site known as Deer Pine Acres, Mr. Levin directly made the payment for the initial option to purchase in 1988, made another payment in the Fall of 1990, and directly paid for the renewal of the option for land on behalf of Miracle, stating to the realtor in a letter that he "represents Miracle." Mr. Levin has been involved in conference calls with FCC legal counsel as well as corresponding with him regarding discovery. Additionally, the record is clear that Mr. Levin personally pays Miracle's financial obligations. Miracle's bills are sent directly to Mr. Levin, and Mr. Levin writes the checks directly to the payees. Due to this ongoing activity on the part of Mr. Levin, based upon Commission precedent, Miracle is entitled only to quantitative integration credit equal to the amount of equity in Miracle that Mr. Schroeder owns, namely 75%. *See Royce International Broadcasting*, 5 FCC Rcd 7063, 7064 ¶ 9 (1990); *Richardson Broadcasting Group*, 7 FCC Rcd 1583 (1992); *Rancho Mirago Radio*, 7 FCC Rcd 480 (1992). Furthermore, the Commission has held that the provision of legal service by a "passive investor vitiates the protection normally afforded such investors under its attribution policies." *Magdalene Gunder Partnership*, 6 FCC Rcd 5976 (1991); *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948 (1988), *rev. denied*, 5 FCC Rcd 5561 (1990). As noted above, Mr. Levin advised a realtor that he represents Miracle.

121. Miracle has proposed that should it be awarded a daytimer preference, Mr. Schroeder will devote no more than 20 hours per week at WSWL(AM) and a minimum of 40 hours per week at the FM station. Although Floyd believes that the 20 hour weekly commitment for WSWL jeopardizes the integration commitment for the proposed FM station, a 60 hour per week range is deemed acceptable by the Commission. PRP argues that Mr. Schroeder has not set any cut-off date for his 20 hour weekly commitment and presumable he could work at the WSWL Station after it is sold. It is unrealistic to maintain that Mr. Schroeder would be offered a 20 hour a week position by the new owner even if Mr. Schroeder were inclined to continue to work there.

122. Miracle's proposal is enhanced by Mr. Schroeder's long-term residence, his civic participation and broadcast experience.

123. *Daytimer Preference.* In order to receive a daytimer preference, the daytime-only licensee must meet five prerequisites: (1) the applicant must have had at least 20 hours per week in the management of the daytime-only station; (2) the daytime licensee must be applying for a FM allot-

ment in the same community of license as its AM station; (3) the applicant must propose to be integrated into the operation of the FM station; (4) the applicant must own the daytime-only station for three continuous years prior to designation of the hearing for the FM channel; and (5) the applicant must pledge to divest the daytime-only facility within three years from commencement of program test authority on the FM station. *Second Report and Order, FM Broadcast Assignment*, 101 FCC 2d 638, 645-647 (1985). The record shows that Miracle meets every one of the criteria. The daytimer preference is equal in weight to local residence.

Misrepresentation by Donovan and Subornation Issues

124. The record reflects that PRP, Floyd and ADX ("Joint Petitioners"), believing that with the expiration of the Miracle lease option, Miracle's reasonable assurance of site availability was automatically cancelled, tried to show that the Miracle principals, believing likewise, induced Donovan to lie about putting the site parcel back on the market. However, at this stage the Joint Petitioners admit that there is no direct evidence that Miracle's principals conspired with Donovan to elicit false testimony. Rather they charge that Miracle lacked candor in not refuting Donovan's unsolicited lies.

125. Fact is, that even if Donovan were marketing the parcel in the interim following the expiration of the lease option, that fact would not of itself cancel his previously rendered assurance of site availability. The record is devoid of any evidence that Donovan negotiated the sale of the proposed site with any one other than Miracle. In fact the record is clear that Donovan treated Miracle as giving it a first right of refusal. After attorney Holt called Donovan, posing as an agent for a potential buyer, Donovan immediately got in touch with Miracle. In short, Miracle's proposed site was at all times available to it at the terms specified in the lease.

126. Donovan stated that he did not place the parcel back on the market or place "For Sale" signs on it. There is no record evidence that refutes this. Although witnesses Dewberry and Vaughn averred to seeing "For Sale" signs, it appears that they were placed there by Mrs. Donovan without Donovan's prior approval. Furthermore, the property was at no time available to Dewberry and it was not available to Vaughn at the price he wanted to pay. Incidently, Vaughn was not sure when he saw the "For Sale" signs. The fact that Donovan gave attorney Holt some information does not constitute an abrogation of the previously rendered assurance of site availability to Miracle.

127. Mr. Schroeder and Levin were unaware of any sign being placed on the proposed site. There is no record evidence that either of them believed that the property was no longer available to them after the expiration of the lease. There is no record evidence that Donovan would not have given Miracle the right of first refusal for the purchase of the property. The issue IS RESOLVED in Miracle's favor.

Document Concealment

128. Except for the Levin to Donovan letter all of the documents about which the Joint Petitioners complain have been produced by Miracle. That Miracle may have produced them late is not enough to establish actionable concealment. Inadvertence, carelessness and mistakes of law must be differentiated from an intent to deceive. (*Gary D. Terrell*, 59 RR 2d 1452, 1454 (Rev. Bd. 1985)). Evidence of carelessness, mistakes, inadvertence and even slipshoddiness has long been held not to amount to an intent to deceive. (*Bluegrass Broadcasting Co.*, 43 FCC 2d 990, 993 (1973); *Hampshire County Broadcasting Co. Inc.*, 99 FCC 2d 600, 603 (Rev. Bd. 1984)).

129. *Transmitter Site Documents.* At the time that the letter to Donovan was written, Levin's secretary was a temporary secretary who had responsibility for keeping separate files on all of Levin's ventures. Levin alleges that his secretary misfiled the transmitter site option and the accompanying letter in his personal files which concerned property matters. Levin's testimony concerning the misfiling is corroborated by Levin's regular secretary who subsequently discovered the letter in the wrong file. At the time of the document production request Levin requested his regular secretary to search through the files and retrieve all of the relevant documents. The letter was not found during this process. Even though the letter proved to be incriminating of Levin's non-passivity, there is no evidence that Levin intended to conceal the letter. Levin being a noted trial attorney surely was aware that the letter to Donovan could have been reached, as it was, from Donovan's files.

130. *Attorney Invoice Documents.* Following the completion of legal work performed at the request of Mr. Levin, Monroe sent a bill for his services to Mr. Schroeder. Monore had stewardship over the documents produced in connection with his work and Levin directed Monore to produce documents in his files. The invoice was not produced timely. Mr. Schroeder testified that it is his practice to keep only important papers and to forward bills to Levin for payment. Mr. Schroeder alleges that whatever documents he had in his possession, he turned over to his communications attorney. It develops that the invoice was not initially produced because it was believed that it had no connection to Miracle Radio.

131. *Levin-Smithwick Letters.* Three letters were not produced because they were deemed to be privileged. At the hearing Levin waived the privilege and agreed to release the documents. The Joint Petitioners argue that Levin stated at the hearing that he believed the documents not to include confidential matter. But that clearly does not pertain to the third letter. Fact is, Miracle did not intend to conceal these documents but voluntarily produced them.

132. *Security Documents.* As noted above, Mr. Schroeder at the hearing recalled that Monroe had drawn up a UCC filing and a promissory note but he did not keep a copy and had forgotten about it. Mr. Schroeder could not recall the date that the UCC statement or note was signed. It was Levin who at the hearing disclosed the existence of the UCC filing. He believed that it had been duly exchanged previously but believed that it had no other relevance than being a lien against radio station equipment. The security documents were supplied after the close of the hearing, but by *Memorandum Opinion and Order*, FCC 93M-145, released April 5, 1993, were incorporated into the record.

133. *Additional Documents.* The Joint Petitioners have not made an adequate showing of any documents still being extant. The record shows that the Director of Administration for the law firm of Levin, Middlebrooks, Mabie, Thomas Mayes & Mitchell turned all documents he found in an "as is" condition.

134. From the foregoing explanations it is clear that there was no intent to conceal. The explanations given are deemed plausible. There is no evidence to compel a con-

trary ruling. The testimony of Levin and Mr. Schroeder is accepted as credible. In light of the foregoing and in view of Miracle's unblemished record as a Commission licensee the issue IS RESOLVED in Miracle's favor.

ADX Communications of Pensacola

135. *Diversification.* ADX has not own any attributable broadcast interests. ADX is not assessed a diversification demerit.

136. *Integration.* ADX has not proposed integration in this proceeding. ADX does not receive a preference under this factor.

Auxiliary Power

137. All applicants have proposed to install auxiliary power facilities.

Comparative Coverage

138. Where the areas and populations within the applicants' proposed coverage areas are already well-served, the Commission has awarded a slight coverage preference only to those applicants proposing substantially greater overall coverage than their competitors. *See Simon Geller*, 90 FCC 2d 250, 268-69, 276 (1982), where a slight preference was awarded to an applicant proposing to serve four times more area and 315,000 more people than its competitor. For less significant differences, a very slight preference has been awarded. *See, e.g., Barton Broadcasting Co.*, 104 FCC 2d 785, 791 (Rev. Bd. 1986), where a very slight preference was awarded to an applicant proposing to serve 44,215 or 27% more people. Where the differences are insignificant, no preference is awarded. *See, Metro Broadcasting*, 99 FCC 2d 688, 699 (1989).

139. Here, the differences between Floyd, who provides the greatest service and PRP (43,164 persons or 12%) and ADX (38,885 persons or 10%) are sufficient to warrant giving Floyd a very slight preference as to PRP and ADX. However, the remaining differences among the applicants, which in no case amount to more than a differential of 21,654 persons or 6%, are too insubstantial to warrant award of any preference.

Ultimate Conclusions of Law

140. Floyd has been found to be financially unqualified. ADX proposes no integration into management. Miracle has been awarded 75% integration credit. PRP has been awarded 100% integration credit. The difference in the integration credit given is 25% which by Commission precedent is decisive. No amount of enhancement awarded to Miracle could offset PRP's integration superiority. *See, The New Continental Broadcasting Company*, 50 RR 2d 1117, 1133 (Rev. Bd. 1981). PRP is clearly the winner. PRP is best suited to be a Commission licensee.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the decision on its own motion in accordance with Section 1.276 of the Rules, the application of Pensacola Radio Partners (File No. BPH-880323MJ) IS GRANTED, and the applications of Vernon C. Floyd(File No. BPH-880324MK); Miracle Radio, Inc. (File No. BPH-880324NU); and David Earl Hoxeng d/b/a ADX Communications of Pensacola (File No. BPH-880324OJ) ARE DENIED.[6]

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

[6] In the event exceptions are not filed within 30 days after the release of this Initial Decision and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Claircom Communications Group, L.P.

Notice of Apparent Liability for Forfeiture
Penalty for Station KNKG801 in the Public Land Mobile Service at Kenner, Louisiana

File No. 316ms0019

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 4, 1993

By the Chief, Mobile Services Division:

1. On February 26, 1993, Claircom Communications Group, L.P. ("Claircom") informed the Commission that it had constructed a ground station in the 800 MHz Air-Ground Radiotelephone Service more than one mile from the reference coordinates specified in Section 22.1109 of the Commission's Rules[1] for Kenner, Louisiana, in a request for Special Temporary Authority ("STA") for this facility. Claircom filed the STA request to continue to operate the ground station that was located more than one mile from the reference ground station coordinates listed in Section 22.1109. The STA was granted on March 11, 1993.

2. Claircom claims in its request for STA that the ground station was constructed based on the mistaken belief that the site complied with the one mile collocation requirement specified in Section 22.1109.

3. Section 22.117(c) of the Commission's Rules, in relevant part, states:

> *800 MHz Air-Ground Radiotelephone Service.* Air-ground licensees may construct and operate additional ground stations less than one mile from the stations listed in § 22.1109 or any station authorized at a later date in accordance with the requirements of subsection (b) of this section...

Therefore, because Claircom constructed its Kenner, Louisiana location at a distance greater than one mile from the stations listed in Section 22.1109, it is in apparent violation of Section 22.117(c).

4. Section 503(b) of the Communications Act states in pertinent part:

> (1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> . . .
>
> (B) . . . willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter ... shall be liable to the United States for a forfeiture penalty.

We find that Claircom's construction of the ground station was unauthorized. Consequently, Claircom's construction constitutes willful and repeated conduct within the terms of the statute.[2]

5. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for construction at an unauthorized location is $20,000. The forfeiture is being adjusted downward for voluntary disclosure of Claircom's unauthorized construction by $6,000. Consequently a $14,000 forfeiture is assessed.

6. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Claircom Communications Group, L.P. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Fourteen Thousand Dollars ($14,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

7. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

8. A copy of this Notice is being sent to Claircom Communications Group, L.P., 700 Fifth Avenue, Suite 2100, Seattle, Washington, by Certified Mail, Return Receipt Requested.

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[1] Section 22.1109 requires ground stations to be located within one mile of the locations specified by that section when using the channel block allotted for each location.

[2] Section 312(f)(1) of the Communications Act, which also applies to Section 503(b) (*see Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991)), provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2nd Sess. 50-51 (1982).

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Claircom Communications Group, L.P.

Notice of Apparent Liability for Forfeiture
Penalty for Station KNKG801 in the Public Land Mobile Service at Nashville, Tennessee

File No. 316ms0020

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 4, 1993

By the Chief, Mobile Services Division:

1. On February 26, 1993, Claircom Communications Group, L.P. ("Claircom") informed the Commission that it had constructed a ground station in the 800 MHz Air-Ground Radiotelephone Service more than one mile from the reference coordinates specified in Section 22.1109 of the Commission's Rules[1] for Nashville, Tennessee, in a request for Special Temporary Authority ("STA") for this facility. Claircom filed the STA request to continue to operate the ground station that was located more than one mile from the reference ground station coordinates listed in Section 22.1109. The STA was granted on March 11, 1993.

2. Claircom claims in its request for STA that the ground station was constructed based on the mistaken belief that the site complied with the one mile collocation requirement specified in Section 22.1109.

3. Section 22.117(c) of the Commission's Rules, in relevant part, states:

> *800 MHz Air-Ground Radiotelephone Service.* Air-ground licensees may construct and operate additional ground stations less than one mile from the stations listed in § 22.1109 or any station authorized at a later date in accordance with the requirements of subsection (b) of this section...

Therefore, because Claircom constructed its Nashville, Tennessee, location at a distance greater than one mile from the stations listed in Section 22.1109, it is in apparent violation of Section 22.117(c).

4. Section 503(b) of the Communications Act states in pertinent part:

> (1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> . . .
>
> (B) . . . willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter ... shall be liable to the United States for a forfeiture penalty.

We find that Claircom's construction of the ground station was unauthorized. Consequently, Claircom's construction constitutes willful and repeated conduct within the terms of the statute.[2]

5. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for construction at an unauthorized location is $20,000. The forfeiture is being adjusted downward for voluntary disclosure of Claircom's unauthorized construction by $6,000. Consequently, a $14,000 forfeiture is assessed.

6. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Claircom Communications Group, L.P. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Fourteen Thousand Dollars ($14,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

7. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

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FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Bair's Communications, Inc. File No. 316ms0021

Notice of Apparent Liability for Forfeiture
Penalty for Station KIY520 in the Public
Land Mobile Service at Belle Glade, Florida

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On February 28, 1980, the Commission granted an authorization to Bair's Communications, Inc. (Bair's) to operate on frequencies 454.125 MHz and 152.21 MHz at Belle Glade, Florida. The expiration date of the authorization was April 1, 1989. On May 12, 1993, Bair's filed for Special Temporary Authority (STA) to operate the facility until the paperwork necessary to reinstate the license was prepared. The request for an STA included a statement notifying the Commission that the facility had been operating, but that, customer service was terminated until the facility was authorized to operate. The STA was granted June 4, 1993.

2. Section 22.11(b) of the Commission's Rules states:

> *Renewal of station license.* Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed...

Therefore, because Bair's did not timely file FCC Form 405 with the Commission, it is in apparent violation of Section 22.11(b).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that Bair's's failure to file a Form 405, constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures,* FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to file required forms is $20,000. We find no adjustment factors under the *Policy Statement* present and, thus, we do not change the forfeiture amount.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Bair's Communications, Inc. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Twenty Thousand Dollars ($20,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to Bair's Communications, Inc., 557 S.E. Avenue E, Belle Glade, Florida 33430, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

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[1] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Hospers Telephone Exchange, Inc. — File No. 316ms0022

Notice of Apparent
Liability for Forfeiture
Penalty for Station KNKD525 in the Public
Land Mobile Service at Hospers, Iowa

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On September 21, 1984, the Commission granted an authorization to Hospers Telephone Exchange, Inc. (Hospers) to operate on frequency 158.10 MHz at 1 mile northwest of Hospers, Iowa. The expiration date of the authorization was April 1, 1989. On May 21, 1993, Hospers filed for Special Temporary Authority (STA) to operate the facilities until the paperwork necessary to reinstate the license was prepared. The STA was granted on May 27, 1993.

2. Section 22.11(b) of the Commission's Rules states:

> *Renewal of station license.* Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed...

Therefore, because Hospers did not timely file FCC Form 405 with the Commission, it is in apparent violation of Section 22.11(b).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that Hospers's failure to file a Form 405, constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to file required forms is $20,000. We find no adjustment factors under the *Policy Statement* present and, thus, we do not change the forfeiture amount.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Hospers Telephone Exchange, Inc. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Twenty Thousand Dollars ($20,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to Hospers Telephone Exchange, Inc., Box 142, Hospers, Iowa 51238, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

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[1] § Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Hospers Telephone Exchange, Inc. File No. 316ms0023

Notice of Apparent
Liability for Forfeiture
Penalty for Station KNKD524 in the Public
Land Mobile Service at Le Mars, Iowa

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On September 21, 1984, the Commission granted an authorization to Hospers Telephone Exchange, Inc. (Hospers) to operate on frequency 158.10 MHz at 1 mile north of Le Mars, Iowa. The expiration date of the authorization was April 1, 1989. On May 21, 1993, Hospers filed for Special Temporary Authority (STA) to operate the facility until the paperwork necessary to reinstate the license was prepared. The STA was granted June 9, 1993.

2. Section 22.11(b) of the Commission's Rules states:

> *Renewal of station license.* Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed...

Therefore, because Hospers did not timely file FCC Form 405 with the Commission, it is in apparent violation of Section 22.11(b).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that Hospers's failure to file a Form 405, constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to file required forms is $20,000. We find no adjustment factors under the *Policy Statement* present and, thus, we do not change the forfeiture amount.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Hospers Telephone Exchange, Inc. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Twenty Thousand Dollars ($20,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to Hospers Telephone Exchange, Inc., Box 142, Hospers, Iowa 51238, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

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[1] § Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

AAT Radiotelephone Company File No. 316ms0024

Notice of Apparent Liability for Forfeiture Penalty for Station KWU352 in the Public Land Mobile Service at Poestenkill, New York

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On March 20, 1992, the Commission granted an authorization to AAT Radiotelephone Company (AAT) to operate on frequency 454.075 MHz at Poestenkill, New York. The expiration date of the authorization was March 20, 1993. On April 14, 1993, AAT filed FCC Form 489, Notification of Status of Facilities, requesting reinstatement. The FCC Form 489 included a statement notifying the Commission that construction had been completed and operation had commenced.

2. Section 22.9(b)(1) of the Commission's Rules states:

> *Notification of status of facilities. (FCC Form 489).* When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

Therefore, because AAT commenced operation without timely filing FCC Form 489 with the Commission, it is in apparent violation of Section 22.9(b)(1).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that AAT's failure to file a Form 489 until April 14, 1993, constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to file required forms is $20,000. The forfeiture is being adjusted downward by $10,000 because failing to file an FCC Form 489 is a relatively minor violation, and by an additional $6,000 because AAT voluntarily disclosed its failure to file the FCC Form 489. Consequently, a $4,000 forfeiture is assessed.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, AAT Radiotelephone Company IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Four Thousand Dollars ($4,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to AAT Radiotelephone Company, 1854 Hylan Boulevard, Staten Island, New York 10305, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

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[1] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Associated Communications Group, Inc. File No. 316ms0025

Notice of Apparent Liability for Forfeiture Penalty for Station KNKK885 in the Public Land Mobile Service at Orlando, Florida

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On February 4, 1988, the Commission granted an authorization to Associated Communications Group, Inc. (Associated) to operate on frequency 931.1625 MHz at Orlando, Florida. The expiration date of the authorization was February 4, 1989. On April 12, 1993, Associated filed FCC Form 489, Notification of Status of Facilities, requesting reinstatement. The FCC Form 489 included a statement notifying the Commission that construction had been completed and operation had commenced.

2. Section 22.9(b)(1) of the Commission's Rules states:

> *Notification of status of facilities. (FCC Form 489).* When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

Therefore, because Associated commenced operation without timely filing FCC Form 489 with the Commission, it is in apparent violation of Section 22.9(b)(1).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that Associated's failure to file FCC Form 489 until April 12, 1993, constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to file required forms is $20,000. The forfeiture is being adjusted downward by $10,000 because failing to file an FCC Form 489 is a relatively minor violation. Consequently, a $10,000 forfeiture is assessed.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Associated Communications Group, Inc. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Ten Thousand Dollars ($10,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to Associated Communications Group, Inc., 1384 Bennett Drive, Suite 138, Longwood, Florida 32750, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

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[1] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Dial Page, Inc. File No. 316ms0026

Notice of Apparent Liability for Forfeiture
Penalty for Station KQZ749 in the Public
Land Mobile Service at Savannah, Georgia

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On July 2, 1992 and August 18, 1992, the Commission granted three authorizations to Dial Page, Inc. (Dial) to operate facilities on frequencies 152.24 MHz, 158.70 MHz and 72.30 MHz at Savannah, Georgia. The expiration dates of the authorizations were August 2, 1993 for the 152 MHz band facilities and August 18, 1993 for the 72 MHz control facility. On August 25, 1993, Dial filed FCC Forms 489, Notification of Status of Facilities, notifying the Commission that construction had been completed and operation had commenced.

2. Section 22.9(b)(1) of the Commission's Rules states:

> *Notification of status of facilities. (FCC Form 489).* When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

Therefore, because Dial commenced operation without timely filing FCC Form 489 with the Commission, it is in apparent violation of Section 22.9(b)(1).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that Dial's failure to file a Form 489 until August 25, 1993, constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to file required forms is $20,000, but because Dial did not file the required forms for three separate construction permits, the forfeiture is tripled to $60,000. The forfeiture is being adjusted downward by $30,000 because failing to file an FCC Form 489 is a relatively minor violation, and by an additional $18,000 because Dial voluntarily disclosed its failure to file the FCC Form 489. Consequently, a $12,000 forfeiture is assessed.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Dial Page, Inc. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Twelve Thousand Dollars ($12,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to Dial Page, Inc., P.O. Drawer 10767, Federal Station, Greenville, South Carolina 29603-0767, by Certified Mail, Return Receipt Requested.

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[1] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Dial Page, Inc. File No. 316ms0027

Notice of Apparent Liability for Forfeiture Penalty for Station KUO568 in the Public Land Mobile Service at Johnson City, Tennessee

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On August 7, 1992 and August 11, 1992, the Commission granted authorizations to Dial Page, Inc. (Dial) to operate facilities on frequencies 152.24 MHz and 454.300 MHz at Johnson City, Tennessee. The expiration dates of the authorizations were August 7, 1993 and August 11, 1993, respectively. On August 25, 1993, Dial filed two FCC Forms 489, Notification of Status of Facilities, notifying the Commission that construction had been completed and operation had commenced.

2. Section 22.9(b)(1) of the Commission's Rules states:

> *Notification of status of facilities. (FCC Form 489).* When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

Therefore, because Dial commenced operation without timely filing FCC Form 489 with the Commission, it is in apparent violation of Section 22.9(b)(1).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that Dial's failure to file a Form 489 until August 25, 1993, constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to file required forms is $20,000, but because Dial did not file the required forms for two separate construction permits, the forfeiture is doubled to $40,000. The forfeiture is being adjusted downward by $20,000 because failing to file an FCC Form 489 is a relatively minor violation, and by an additional $12,000 because Dial voluntarily disclosed its failure to file the FCC Forms 489. Consequently, a $8,000 forfeiture is assessed.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Dial Page, Inc. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Eight Thousand Dollars ($8,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to Dial Page, Inc., P.O. Box 10767, Federal Station, Greenville, South Carolina 29603-0767, by Certified Mail, Return Receipt Requested.

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[1] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Hart Telephone Company File No. 316ms0028

Notice of Apparent Liability for Forfeiture
Penalty for Station KNKB248 in the Public
Land Mobile Service at Hartwell, Georgia

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On February 26, 1987, the Commission granted an authorization to Hart Telephone Company (Hart) to operate on frequency 152.84 MHz at 2 miles west of Georgia Highway 51 on Play County Road near Mount Olivet Church, Hartwell, Georgia. The expiration date of the authorization was February 26, 1988. On October 26, 1992, Hart filed FCC Form 489, Notification of Status of Facilities, notifying the Commission that the authorized facility had been constructed in accordance with the authorization.

2. Section 22.9(b)(1) of the Commission's Rules states:

> *Notification of status of facilities. (FCC Form 489).* When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

Therefore, because Hart commenced operation without timely filing FCC Form 489 with the Commission, it is in apparent violation of Section 22.9(b)(1).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that Hart's failure to file a FCC Form 489 until October 26, 1992, constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to file required forms is $20,000. The forfeiture is being adjusted downward by $10,000 because failing to file an FCC Form 489 is a relatively minor violation. Consequently, a $10,000 forfeiture is assessed.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Hart Telephone Company IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Ten Thousand Dollars ($10,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to Hart Telephone Company, 202 N Forest Ave., Hartwell, Georgia 30643, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

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[1] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re

Liberty Communications Inc. File No. 316ms0029

Notice of Apparent Liability for Forfeiture
Penalty for Station KNKC427 in the Public
Land Mobile Service at Tallahassee, Florida

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On November 6, 1991, the Commission granted an authorization to Liberty Communications Inc. (Liberty) to operate on frequency 152.03 MHz at 6.6 miles North-Northeast of Tallahassee, Florida. The expiration date of the authorization was November 6, 1992. On November 16, 1992, Liberty filed FCC Form 489, Notification of Status of Facilities, requesting reinstatement. The FCC Form 489 included a statement notifying the Commission that construction had been completed and operation had commenced.

2. Section 22.9(b)(1) of the Commission's Rules states:

> *Notification of status of facilities. (FCC Form 489).* When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

Therefore, because Liberty commenced operation without timely filing FCC Form 489 with the Commission, it is in apparent violation of Section 22.9(b)(1).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that Liberty's failure to file a Form 489 until November 16, 1992, constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to file required forms is $20,000. The forfeiture is being adjusted downward by $10,000 because failing to file an FCC Form 489 is a relatively minor violation, and by an additional $6,000 because Liberty voluntarily disclosed its failure to file the FCC Form 489. Consequently, a $4,000 forfeiture is assessed.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Liberty Communications Inc. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Four Thousand Dollars ($4,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to Liberty Communications Inc., 4224 East West Highway, Chevy Chase, Maryland 20813, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

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[1] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Consolidated Communications Mobile Services — File No. 316ms0030

Notice of Apparent Liability for Forfeiture Penalty for Station KWH311 in the Public Land Mobile Service at Effingham, Illinois

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

1. On July 10, 1989, the Commission granted an authorization to Consolidated Communications Mobile Services (CCMS) to operate on frequency 158.10 MHz at Effingham, Illinois. CCMS operated at the authorized location until February 1993 when the transmitter was relocated to a tower in nearby Sigel Town, Illinois. The failure to file the appropriate form was discovered on June 16, 1993, when an FCC Field Operation Bureau staff member, making a routine inspection of CCMS's facilities, realized that the relocation had occurred and brought this matter to the attention of CCMS management. CCMS claims in its letter requesting Special Temporary Authority (STA) that through an egregious administrative error, CCMS failed to apply for a modification of license to effect the relocation of the transmitter. The STA to operate the facility at Sigel Town, Illinois was granted on June 29, 1993.

2. Section 22.9(a) of the Commission's Rules states, in pertinent part:

> *Application for new or modified common carrier radio station under part 22.* Except for facility changes for which FCC Form 489 is prescribed in paragraph (d), FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Under part 22") shall be submitted for each station in the following categories of station construction or modification:
>
> (1) Each base station...

Therefore, because CCMS modified its facilities without filing FCC Form 401 with the Commission, it is in apparent violation of Section 22.9(a).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that CCMS's relocation without the proper authorization constitutes willful and repeated conduct within the terms of the statute.[1]

4. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for construction or operation at an unauthorized location is $20,000. We find no adjustment factors under the *Policy Statement* present and, thus, we do not change the forfeiture amount.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Consolidated Communications Mobile Services IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Twenty Thousand Dollars ($20,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

7. A copy of this Notice is being sent to Consolidated Communications Mobile Services, 121 South 17th Street, Mattoon, Illinois 61938, by Certified Mail, Return Receipt Requested.

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[1] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

Claircom Communications Group, L.P. — File No. 23040-CG-P/ML-01-93

For facilities in the 800 MHz Air-to-Ground Service at Marfa, Texas

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 1993; Released: October 5, 1993

By the Chief, Mobile Services Division:

I. INTRODUCTION

1. Claircom Communications Group, L.P. (Claircom) filed the above-captioned application to provide service at Marfa, Texas. GTE Airfone (GTE) filed a petition to deny Claircom's application. Claircom filed an opposition. For the reasons set forth below, we dismiss GTE's petition and grant Claircom's captioned application.

II. DISCUSSION

2. Claircom, in its opposition, claims that GTE's petition to deny is defective for lack of an affidavit supporting the allegations presented. GTE did not respond to Claircom's argument. GTE's petition to deny was filed without affidavits from a knowledgeable person supporting the specific allegations of fact. The Communications Act requires that "... allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof." 47 U.S.C. § 309(d)(1). Additionally, section 22.30 of the Commission's Rules requires the petitioner to attach an affidavit which demonstrates, *inter alia*, "that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest." 47 C.F.R. § 22.30(a)(3). Thus, GTE's petition is defective on its face. We need not consider petitions which are procedurally defective. *Corpus Christi Cellular Telephone Co.*, 64 RR2d 1270 (Mobile Serv. Div. 1988).[1] Therefore, we will dismiss GTE's petition for failure to comply with Section 309(d) of the Act and Section 22.30(a)(3) of the Commission's Rules.

3. We have reviewed Claircom's application and find it to be technically and financially qualified. Additionally, in accordance with Section 309 of the Communications Act, 47 U.S.C. § 309(a), we find that the public interest, convenience and necessity will be served by the grant of this application. Therefore, we will grant the application.

III. ORDERING PARAGRAPHS

4. IT IS HEREBY ORDERED THAT the petition to deny filed by GTE Airfone in this matter IS DISMISSED.

5. IT IS FURTHER ORDERED THAT the application filed by Claircom Communications Group, L.P., file no. 23040-CG-P/ML-01-93 IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

[1] In *Corpus Christi*, the Division rejected a petition to deny based upon a defective affidavit. The affidavit failed to contain a signature or the name of the proponent of the facts. The Division held that the incomplete affidavit did not comply with the requirements of Section 309(d)(1) of the Act nor with Section 22.30(a)(3) of the Commission's Rules. *Corpus Christi*, 64 RR2d at 1272.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE HAWAIIAN TELEPHONE COMPANY — File No. I-T-C-93-247

Application for authority to provide packet switching service between Hawaii and Guatemala.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 20, 1993; Released: October 5, 1993

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of packet switching service between Hawaii, and Guatemala by GTE Hawaiian Telephone Company Inc. (HTC).

2. Accordingly, IT IS ORDERED, that application File No. I-T-C-93-247 IS GRANTED, and HTC is authorized to provide international packet switching service (IPSS), on a transit basis, via facilities provided by AT&T Accunet Packet Switching Service between Hawaii and Guatemala.

3. No material changes inconsistent with this or any other recent Commission order shall be made before final execution of operating agreements between HTC and its correspondent, and HTC shall file a copy of the agreement as well as any amendments (including accounting rates) with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirments contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

4. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules 47 C.F.R. Part 61, for the service authorized in this Order.

5. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b).

7. This order issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI File Nos. I-T-C-93-249
Telecommunications Corp. I-T-C-93-282
American Telephone & Telegraph Co.

Applications for Authority, Pursuant to Section 214 of the Communications Act, As Amended, to Establish Service between the United States and the Democratic People's Republic of Korea on a Switched Transit Basis

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 28, 1993; Released: October 5, 1993

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity will be served by authorization of the requested facilities and services.[1]

2. Accordingly, IT IS ORDERED that application File No. I-T-C-93-249 IS GRANTED, and MCI is authorized to use previously-authorized circuits between the U.S. and Hong Kong, connecting with facilities of its correspondent in Hong Kong for the provision of international virtual private network (IVPN) service between the Permanent Mission of the Democratic People's Republic of Korea to the United Nations in New York City (Mission) and the Democratic People's Republic of Korea (North Korea).[2]

3. IT IS FURTHER ORDERED that application File No. I-T-C-93-282 IS GRANTED, and AT&T is authorized to use previously-authorized circuits between the U.S. and either Hong Kong or Japan, connecting with facilities of its correspondent in Hong Kong or Japan for the provision of IVPN service between the Mission and North Korea.

4. IT IS FURTHER ORDERED that neither the applicants nor any persons or companies directly or indirectly controlling or controlled by the applicants, or under direct or indirect common control with the applicants, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which the applicants or any persons or companies controlling or controlled by the applicants are parties.

5. IT IS FURTHER ORDERED that our authorization of the applicants to provide IVPN is limited to the provision of such service only between the Mission and North Korea -- that is, service which originates at the Mission and terminates in North Korea, or which originates in North Korea and terminates at the Mission.

6. IT IS FURTHER ORDERED that the applicants shall file with the Commission copies of any operating agreements they enter into with foreign correspondents within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. § 43.51.

7. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this order.

8. IT IS FURTHER ORDERED that the applicants shall file annual reports of overseas telecommunications traffic for North Korea, as required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

9. IT IS FURTHER ORDERED that each applicant shall file an application pursuant to Section 214 of the Communications Act, 47 U.S.C. § 214, before adding any circuits or channels of communication.

10. IT IS FURTHER ORDERED that this authorization is subject to further Commission action on the issue of transiting.

11. IT IS FURTHER ORDERED that the continued effectiveness of this authorization is contingent upon the applicants' compliance with applicable Treasury Department regulations and licenses regarding service to North Korea.

12. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

[1] By letter dated September 24, 1993, the U.S. Department of State gave its approval for the grant of MCI's and AT&T's applications. *See* Letter, dated September 24, 1993, from Randolph C. Earnest to George S. Li, Chief, International Facilities Division, Common Carrier Bureau. In addition, both MCI and AT&T have obtained licenses from the Department of the Treasury, permitting them to engage in "[a]ll transactions incident to the provision of voice and facsimile telecommunications services" between the requested points. *See* Department of the Treasury, License Nos. B-92118 and B-92119, issued February 12, 1993. As a condition of the license, both MCI and AT&T must "establish a blocked account for any funds that may accrue to [North Korea] as a result of these services." *Id.*

[2] MCI states that a programmed switch will ensure that all outgoing calls over the proposed circuit will originate exclusively from within the Mission, and all incoming calls will terminate exclusively at the Mission. AT&T states that it will employ existing technology which can block all calls to North Korea from any telephone in the United States, other than the three telephone numbers serving the Mission.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TBA, INC.,
TBA OF CLEVELAND, INC., and
TBA OF BRATENAHL VILLAGE, INC.,
Complainants,

v.

THE OHIO BELL TELEPHONE COMPANY,
Defendant.

File No. E-90-394

MEMORANDUM OPINION AND ORDER

Adopted: September 30, 1993; Released: October 6, 1993

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On August 17, 1990, complainants TBA, Inc., TBA of Cleveland, Inc., and TBA of Bratenahl Village, Inc. (collectively "TBA"), filed the above-captioned formal complaint against The Ohio Bell Telephone Company ("Ohio Bell") alleging violations of Sections 202, 214 and 224 of the Communications Act of 1934, as amended ("the Act"),[1] in connection with the construction, operation and extension of lines of a broadband cable television transport system.[2] Ohio Bell denied the allegations and moved to dismiss the complaint. For the reasons discussed below, we deny the complaint.

II. BACKGROUND

2. In 1986, Ohio Bell entered into an agreement with a franchised cable television operator, North Coast Cable Ltd. ("North Coast Cable"), to build a broadband transmission facility to provide cable television service in Cleveland, Ohio. The facility was built by Ohio Bell pursuant to Section 214 certification[3] and was completed in October 1990. The system consists of several hubs interconnected by optical fiber and a coaxial cable distribution network. After commencing service and pursuant to a provision in the agreement, North Coast Cable purchased the coaxial cable portion of the distribution system from Ohio Bell. Although record title remained with Ohio Bell, all other incidents of ownership were conveyed to North Coast Cable. Currently, Ohio Bell provides North Coast Cable with the broadband transmission facilities in accordance with FCC Tariff No. 43.

3. In June 1990, North Coast Cable extended a line of the coaxial portion of the system into the Village of Bratenahl ("Bratenahl"), a suburb of Cleveland, by tapping into the transport system at a utility pole located within the city limits of Cleveland.[4] Thereafter, North Coast Cable began competing with complainant TBA of Bratenahl Village, Inc., which had been providing cable television service in that community since 1983.

4. TBA filed this formal complaint alleging that Ohio Bell violated Section 214 of the Act by exceeding its existing Section 214 authority by engaging in signal transmission beyond the city limits of Cleveland.[5] The parties agreed to conduct discovery without Commission involvement and established a schedule for the submission of briefs and evidence.[6]

III. CONTENTIONS OF THE PARTIES

5. Ohio Bell maintains that TBA's complaint fails to establish a Section 214 violation.[7] First, Ohio Bell maintains that it did not extend a line of the broadband transport system into Bratenahl.[8] It states that its Section 214 certificate authorized construction of the broadband transport system in Cleveland and that it constructed the facilities in Cleveland, as authorized. Second, anticipating TBA's argument that it is operating a communication channel in Bratenahl without Section 214 authority, Ohio Bell maintains that it is not transmitting signals to Bratenahl. It explains that the signal delivered to Bratenahl is under the exclusive control of North Coast Cable.[9] Third, Ohio Bell argues that TBA misinterprets Section 214(a) of the Act.[10] Ohio Bell contends that Section 214 certification is not required where, as here, transmission occurs over a line constructed and operated by a third party, but only where a carrier wishes to transmit over an extended line con-

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[1] 47 U.S.C. §§ 202, 214, 224.

[2] Subsequently, the parties agreed to limit the issue presented for consideration to "whether Ohio Bell has violated its existing Section 214 grant of authority". Agreed Statement of Facts at 6 (filed Jan. 25, 1991); Brief in Opposition to Defendant's Motion to Dismiss at 1-2.

[3] In re the Application [of] The Ohio Bell Telephone Company, Memorandum Opinion, Order and Certificate, 1 FCC Rcd 942 (Com. Car. Bur. 1986).

[4] The parties also acknowledge that North Coast Cable provides cable television service to a resident of East Cleveland by way of a line extended from the Cleveland transport system. Agreed Statement of Facts at 4.

[5] Formal Complaint of TBA at 3-4; Brief in Opposition to Defendant's Motion to Dismiss at 1.

[6] Letter from Charles S. Rawlings, Senior Attorney, The Ohio Bell Telephone Co. to Kecia Boney, Attorney, Enforcement Division, Common Carrier Bureau (Oct. 5, 1990); Letter from Charles S. Rawlings to Thomas Wyatt, Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau (July 25, 1991). A brief in support of defendant's motion to dismiss was filed on September 9, 1991, and a brief in opposition to defendant's motion to dismiss was filed on October 9, 1991. Ohio Bell filed a reply to complainants' brief on October 24, 1991, and TBA responded with a sur-reply brief on October 29, 1991.

[7] *See* Brief of the Ohio Bell Telephone Company in Support of Motion to Dismiss at 6-14.

[8] *Id.* at 8. Ohio Bell contends that TBA's complaint should be dismissed on this basis alone. *Id.*

[9] Additionally, Ohio Bell states that it derives no benefit from the transmission of North Coast Cable's signals.

[10] Reply of the Ohio Bell Telephone Company to Brief in Opposition to Defendant's Motion to Dismiss at 5-6.

structed or operated by the carrier.[11] Ohio Bell adds that it has been unfairly placed in the middle of a competitive struggle between TBA and North Coast Cable. Finally, Ohio Bell maintains that it is not a cable operator, that it neither transmits nor distributes cable signals as a cable operator, and that it is not in the cable television business.

6. In opposition, TBA claims that Ohio Bell is exceeding its existing Section 214 certification because that authorization is limited to construction and operation of the broadband facility in Cleveland and does not include Bratenahl.[12] TBA maintains that because Ohio Bell owns the hub-interconnect network, and because the hubs are essential for Bratenahl subscribers to receive cable television service, Ohio Bell is engaged in signal transmission in Bratenahl.[13] TBA also argues that Ohio Bell had notice and knowledge of North Coast Cable's plan to extend the line into Bratenahl and did nothing to stop it.[14] The failure to act, TBA argues, made Ohio Bell an active participant in the extension of the line by North Coast Cable, and put it on notice that this would result in Ohio Bell transmitting the signal outside the area authorized by the Section 214 certificate, and that this would require Commission approval.

IV. DISCUSSION

7. We have carefully reviewed the record in this proceeding and conclude that TBA has not satisfied its burden of proving that Ohio Bell has exceeded the authority of its Section 214 certification.[15] Section 214 requires common carriers to obtain FCC certification before constructing a new line, extending, operating or acquiring any line, or engaging in transmission over any extended or additional line.[16] The parties acknowledge that North Coast Cable, a cable television operator, not Ohio Bell, extended a coaxial line into Bratenahl.[17] Section 214 specifically applies to "carriers" constructing or extending lines. In the instant case, a carrier did not extend a line. Ohio Bell constructed the broadband transport facility in accordance with the Section 214 authority granted by the Commission in 1986. It is undisputed that North Coast Cable extended the line into Bratenahl, and moreover, that North Coast Cable is not a common carrier within the Commission's definition, and thus, is not required to obtain prior Section 214 certification. Furthermore, even if Ohio Bell had knowledge that North Coast Cable intended to extend a line into Bratenahl, that fact alone does not make it a participant in the line extension.

8. We also reject TBA's argument that Ohio Bell has exceeded its existing Section 214 authorization by engaging in signal transmission in the Village of Bratenahl. As mentioned above, Section 214 requires carriers to obtain Commission certification before engaging in transmission over an extended line. However, it is North Coast Cable, not Ohio Bell, that transmits signals into Bratenahl. North Coast Cable's cable television service commences at its headend where broadcast, microwave and satellite television signals are received, processed, and re-transmitted throughout the transport system. The signals and the entire cable service are exclusively controlled by North Coast Cable and not Ohio Bell.[18] In these circumstances, Ohio Bell has not exceeded its existing Section 214 certification by engaging in transmission over its extended lines because it neither extended a line into Bratenahl nor engaged in signal transmission there.

V. CONCLUSION

9. After consideration of the unique facts of this case, we conclude that TBA has failed to establish a Section 214 violation by Ohio Bell, and therefore, TBA's complaint is denied.[19]

VI. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the complaint filed by TBA, Inc., TBA of Cleveland, Inc., and TBA of Bratenahl Village, Inc. IS DENIED.

11. IT IS FURTHER ORDERED that the Motion to Dismiss filed by The Ohio Bell Telephone Company on September 9, 1991, IS DISMISSED AS MOOT.

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[11] *Id.* at 6.

[12] Brief in Opposition to Defendant's Motion to Dismiss at 6-7.

[13] *Id.* at 7. TBA also claims that Ohio Bell has violated Section 613 of the Act, 47 U.S.C. § 533, and the Commission's telephone company-cable television cross-ownership rules, 47 C.F.R. §§ 63.54-63.58. TBA further contends that Ohio Bell has violated the Communications Act and the Commission's rules by engaging in unlawful cross-subsidization. *Id.* at 14. TBA did not raise these allegations in its complaint. Moreover, the parties have agreed that the sole issue for consideration before the Commission is whether Ohio Bell exceeded its existing Section 214 authority. Agreed Statement of Facts at 6; Brief in Opposition to Defendant's Motion to Dismiss at 2. Thus, we will not consider TBA's cross-ownership or cross-subsidization claims.

[14] Brief in Opposition to Defendant's Motion to Dismiss at 10-11, citing Deposition of William Voleski, Assistant Manager, Ohio Bell Cable Television Group at 44-45.

[15] It is well settled that, in a complaint proceeding, the complainant has the burden of establishing a violation of the Communications Act. National Rural Telecommunications Cooperative v. Southern Satellite Systems, Inc., 7 FCC Rcd 3213, 3214 n.15 (Com. Car. Bur. 1992).

[16] 47 U.S.C. § 214(a) provides, in pertinent part:

> No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such addition or extended line . . . .

[17] Agreed Statement of Facts at 3.

[18] *See id.* Ohio Bell's tariff reflects this aspect of its relationship with North Coast Cable. The tariff provides that Ohio Bell shall not, by virtue of its provision of facilities and service, have any control over services offered by North Coast Cable to its subscribers and prohibits the company from discontinuing facilities and services except pursuant to an order of an appropriate governmental authority. Motion to Dismiss on Behalf of the Ohio Bell Telephone Company at 5.

[19] Ohio Bell filed a motion to dismiss the complaint on September 9, 1991. In light of our action taken on the merits of the complaint, however, we dismiss the motion as moot.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of
Stokes Communications Corporation
Licensee, Station WWWT(AM)
Randolph, VT

MEMORANDUM OPINION AND ORDER

Adopted: September 29, 1993; Released: October 6, 1993

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has under consideration (1) a Notice of Apparent Liability (NAL), *Stokes Communications Corporation*, 8 FCC Rcd 2963 (1993) for a forfeiture of twenty thousand dollars ($20,000) issued to Stokes Communications Corporation, licensee of Station WWWT(AM), Randolph, Vermont, for violation of Section 73.1745(a) of the Commission's Rules, and (2) Stokes Communications Corporation's response to the NAL, dated May 20, 1993, and supplemented August 3, 1993, asking that the forfeiture be rescinded or reduced with installment payments permitted.

2. The NAL was issued for repeated violation of Section 73.1745(a), which requires licensees to operate according to their license terms. The forfeiture amount was reached after consideration of the factors set forth in our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *in recon.*, 7 FCC Rcd 5339 (1992), *pet. for review pending sub nom. USTA v. FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992). The licensee has raised no new issues or mitigating circumstances that warrant revisiting the issues. Its showing of financial hardship does not, in this regard, include the data specified in the attachment to our NAL. The attachment states specifically that claims of financial inability to pay must include a profit and loss statement that has been prepared under generally accepted accounting principles. Stokes Communications Corporation's showing, which includes income tax data plus a balance sheet and operating statement prepared "without audit" by an unidentified organization, does not meet this standard.

3. We will nonetheless, on our own motion, reduce the forfeiture amount. Our recent *Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released August 12, 1993, reduces the base forfeiture amount for exceeding power limits, the rule violation for which the NAL was issued, from $12,500 to $10,000. We believe that the revised figure should be the starting point for calculating this forfeiture. Increasing the revised base amount to reflect the repeated nature of the violation and decreasing it because of the licensee's overall record of compliance, the same process that we followed in the NAL, we find that a forfeiture for $15,000 is appropriate.

4. Accordingly, we DENY the response, but on our own motion reduce the forfeiture. Stokes Communications Corporation, licensee of Station WWWT(AM), Randolph, VT, IS ORDERED TO FORFEIT to the United States the sum of fifteen thousand dollars ($15,000) for repeated violation of Section 73.1745(a) of the Commission's Rules. Payment of the forfeiture in installments will be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

FOX BROADCASTING COMPANY, INC.
(Assignor)

and File No. BALH-920731HY

JARAD BROADCASTING
COMPANY, INC.
(Assignee)

For Assignment of License
for Station WIBF(FM)
Jenkintown, Pennsylvania

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 1993; Released: September 27, 1993

By the Commission:

1. The Commission has before it for consideration an "Application for Review" filed on January 13, 1993 by "The Citizens Association for the Preservation of Ethnic Programming on WIBF(FM)" (hereafter, "Citizens"). Previously, the Mass Media Bureau ("Bureau") granted the above-captioned application for assignment of license of Station WIBF-FM, Jenkintown, Pennsylvania, from Fox Broadcasting, Inc. ("Fox") to Jarad Broadcasting Company, Inc. ("Jarad").[1] Subsequently, Citizens filed a pleading styled as a "Petition for Reconsideration" of the Bureau's grant of the assignment of license application. The Bureau denied reconsideration. *Letter from Chief, Audio Services Division to Citizens*, Ref. No. 1800B3-GDG, released December 14, 1992 (*"Letter"*). The Bureau found that Citizens' pleading was procedurally defective because Citizens had not adequately shown, pursuant to 47 C.F.R. § 1.106(b)(1), good reason why it was not possible for it to participate earlier in the proceeding. Substantively, Citizens argues that Jarad's abandonment of foreign-language programming specifically directed to various identifiable ethnic and minority groups in the Philadelphia area calls into question whether grant of the assignment application serves the public interest. The Bureau found no merit to this argument. In its instant pleading, Citizens seeks Commission review of the Bureau's *Letter* denying reconsideration. We find that Citizens' pleading repeats the arguments it previously made to the Bureau and that those arguments are patently without merit. Therefore, we affirm the Bureau's action.[2]

2. IT IS ORDERED, That, pursuant to Section 1.115(g) of the Commission's Rules, the "Application for Review" filed on January 13, 1993 by The Citizens Association for the Preservation of Ethnic Programming on WIBF(FM) IS DENIED.

3. IT IS FURTHER ORDERED, That, pursuant to Section 1.106(b)(1) of the Commission's Rules, the "Petition in Opposition to Assignment of License" filed on February 4, 1993 by Local Union 1241, International Brotherhood of Electrical Workers AFL-CIO IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[1] *See Letter from Chief, Audio Services Division to Luigi Patitucci*, Ref. No. 1800B3-CRB, dated September 23, 1992. This letter granted the assignment of license application and denied an informal objection filed by Luigi Patitucci, Director of Italian Programs for WIBF-FM, protesting Jarad's proposed format change and elimination of various foreign-language broadcasts from WIBF-FM. In a letter filed on March 29, 1993, Jarad informed the Commission that the assignment of license for WIBF-FM was consummated on March 25, 1993.

[2] Also, on February 4, 1993, Local Union 1241, International Brotherhood of Electrical Workers AFL-CIO ("IBEW") submitted a late-filed "Petition in Opposition to Assignment of License". IBEW asserts that Jarad laid off all broadcast technicians previously hired by WIBF-FM, resulting in a labor dispute. IBEW essentially requests that the grant of the assignment of license application be vacated until such time as the labor dispute is substantially resolved. We shall dismiss the pleading, which is an attempt to seek reconsideration of the grant, because it is late filed without good cause. *See* 47 C.F.R. § 1.106(b)(1). In any event, labor disputes are within the jurisdiction of the courts and other appropriate fora, not the Commission.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ameritech Operating Companies

Zone Density Pricing Plans

ORDER

Adopted: September 24, 1993; Released: September 28, 1993

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By this Order, we approve the zone density pricing plan filed by the Ameritech Operating Companies (Ameritech).[1] As discussed further below, we find that the plan, as supplemented, reasonably implements the density pricing authorized by the Commission in the *Special Access Order*.[2] Ameritech may now file tariff revisions, to be effective on not less than 31 days' notice, to implement its zone density pricing plan.

II. BACKGROUND

A. Commission Requirements

2. In the *Special Access Order*, the Commission granted all Tier 1 LECs implementing special access expanded interconnection additional pricing flexibility in order to bring their special access rates more in line with their costs.[3] To implement this additional pricing flexibility, the Commission permitted each affected LEC to establish, subject to Commission approval, zones within each study area and required each central office to be assigned to one of the zones. Once plans are approved, LECs may file tariffs establishing different rates in each zone. The Commission required the LECs to show they assigned each central office to a zone using criteria reflecting cost-related characteristics, although geographic contiguity could, under certain conditions, be a secondary, less important consideration.[4] The Common Carrier Bureau has previously approved zone density plans filed by ten LECs.[5] In this order, we approve the plan, as amended, filed by Ameritech.

B. The Zone Density Plans

3. As a general matter, Ameritech followed a three step procedure to develop its zone plan. First, Ameritech ranked its wire centers in order of decreasing traffic density. Next, it divided the rank-ordered offices into three groups. These groups were designated zone one, two, and three, where zone one contains the rank-ordered wire center group having the highest traffic density. Finally, it adjusted the zone assignments for reasons of geographic contiguity or community of interest between the areas served by the end offices.

4. Ameritech ranked its central offices using Minutes of Use (MOU) per square mile served by each of its wire centers as a density measure, using total inter- and intrastate traffic in its computations.[6] To obtain its density measure, Ameritech first calculated switched MOUs for each wire center. Next, it estimated MOU equivalents for special access traffic in each wire center. Finally, it computed total MOU per square mile served for each wire center by dividing the sum of the computed switched MOU and special access MOU equivalents by the square mileage served. Ameritech contends that many of its wire centers serve large territories and have high volumes of traffic simply because the wire centers serve large geographic areas. It claims that using square milage as a common denominator reduces distortions in determining the relative densities of its large and small offices.[7]

5. Once Ameritech ranked its offices, it assigned them to one of three zones.[8] To create three pricing zones, Ameritech first established preliminary breakpoints by grouping the wire centers according to their computed density levels. It then moved fourteen offices which were surrounded by zone two offices from zone three into zone two to maintain "contiguous communities of interest."[9]

C. Pleadings

6. On March 26, 1993, seven parties[10] filed comments

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[1] Ameritech filed its zone density pricing plan on February 16, 1993. On March 12, 1993, it filed additional supporting information requested by the Common Carrier Bureau. After further examination of the plan, the Bureau requested, and received, further clarification from Ameritech on May 24, 1993.

[2] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, and Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket No. 92-222, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) (*Special Access Order), recon.*, 8 FCC Rcd 127 (1992), *appeal pending sub nom. Bell Atlantic Corp. v. FCC*, No. 92-1619 (D.C. Cir., filed Nov. 25, 1992); *Second Memorandum Opinion and Order on Reconsideration*, CC Docket No. 91-141, FCC 93-378 (released September 2, 1993).

[3] *See Special Access Order*, 7 FCC Rcd at 7373 and 7454 n.411.

[4] *See* Section 61.38(b)(4) of the Commission's Rules, 47 C.F.R. § 61.38(b)(4); *see also Special Access Order*, 7 FCC Rcd at 7455 and n.415.

[5] *See* BellSouth Telecommunications, Inc., GTE Service Corporation, Lincoln Telephone and Telegraph Co., NYNEX Telephone Companies, Pacific Bell, and Rochester Telephone Corporation Zone Density Pricing Plans, 8 FCC Rcd 4443 (Com. Car. Bur. 1993)(*First Zone Density Order); see also* Bell Atlantic Telephone Companies, Centel Telephone Company, Southwestern Bell Telephone Company, United Telephone Companies Zone Density Pricing Plans, 8 FCC Rcd 5529 (Com. Car. Bur. 1993).

[6] Ameritech Plan at 1-3; Ameritech Supplemental Plan at 1-4.

[7] *Id.*

[8] Ameritech Plan at 2-4.

[9] *Id.*

[10] Commenters protesting the Ameritech plan were: Ad Hoc Telecommunications Committee (Ad Hoc); Competitive Telecommunications Association (CompTel); MCI Communications Corporation (MCI); MFS Communications Company, Inc. (MFS); and WilTel, Inc. (WilTel). Sprint Communications Co.

concerning Ameritech's zone plan.[11] Ameritech replied on April 16. The commenters challenged the Ameritech plan in part on broad bases that apply to several plans that were already addressed. These more general issues were addressed and resolved in the *First Zone Density Order* (*see* ¶ ¶ 11-23). We are incorporating by reference our previous discussion of those generic issues in this Order. The commenters' specific challenges to Ameritech's zone plan, and Ameritech's responses, are discussed in detail in the next section.

III. DISCUSSION

7. In this section, we address the commenters' specific challenges to Ameritech's plan, and Ameritech's response. We have reviewed these challenges, and the related pleadings at issue in this Order. We conclude that Ameritech's zone plan reflects cost-related characteristics based on traffic density, as the Commission intended in the *Special Access Order*. Accordingly, we approve Ameritech's plan, as supplemented. Ameritech may proceed to file tariffs implementing its zone plan on 31 days' notice.

8. *Density Measure*. MFS opposes the use of a method of measuring traffic density that employs a per square mile factor in ranking offices.[12] MFS argues that the method may unreasonably assign high capacity wire centers to lower-density zones, resulting in offices that handle similar volumes of traffic and, thus, have similar cost characteristics, being assigned to different rate zones. Moreover, MFS claims that use of density per square mile is redundant because Ameritech may impose distance-sensitive charges that vary within each zone for channel terminations to reflect the effect of distance on costs.[13]

9. Ameritech and Comptel contend that using MOU per square mile is a reasonable measure of traffic density.[14] Ameritech argues that absolute levels of traffic would inappropriately assign large, low-density offices to a high-density zone. Ameritech submits that central offices with similar levels of traffic do not necessarily have the same costs, noting the higher costs for items such as cable, conduit, and right-of-way for less dense offices serving relatively large geographic areas.[15] CompTel argues that MOU per square mile measures traffic density, as opposed to traffic volume. CompTel thus asserts that including square milage as a factor includes the effect of distance on costs, ensuring that the zones are more aligned with the costs of providing channel terminations, which plans based only upon traffic volume at the wire centers may not reflect.[16]

10. The density per square mile measurement approach accounts to some extent for cost differences per unit of traffic carried due to different line lengths. Contrary to the arguments of some parties, the use of a density per square mile factor in determining rankings to reflect the cost characteristics of different offices appears to be reasonable where there are non-distance sensitive channel termination rates. This is because the costs incurred by a LEC that are related to carrying a given traffic volume could be greater for a central office that serves a large geographic area than for a central office that serves a smaller geographic area. Since Ameritech has non-distance sensitive channel termination rates, we need not reach the question raised by MFS of whether use of a density per square mile approach would be equally reasonable if distance sensitive channel termination rates were applied. Moreover, because the equivalent MOU approach also meets the Commission's requirement to consider office traffic density, we approve Ameritech's use of this methodology for ranking offices to reflect cost-related characteristics.

11. *Movement of Offices Among Zones*. MFS claims that, despite Ameritech's assertion that each office was moved from zone three to zone two because it "was surrounded by zone two offices," Ameritech's Cleveland-64 office was not surrounded by zone two offices, but rather, was bordered by three zone two offices and one zone three office.[17] Ameritech replies that the Cleveland-64 office is contiguous to five offices in zone two, and one office in zone one. It argues that the Cleveland-64 office has a much stronger community of interest with zone two offices than it does to other zone three offices.[18]

12. We have carefully scrutinized Ameritech's reclassification of individual offices based on contiguity or community of interest. Our review has included a review of maps provided by Ameritech which show the locations of the reassigned offices and their relationship to other offices. We conclude that Ameritech's reassignment of the Cleveland-64 office from zone three to zone two reflects a clear example of a proper office reassignment for contiguity reasons. That office is located in an area bordered by four zone two offices and a single zone one office, and thus would appear to have a much greater community of interest with zone two offices than with zone three offices.

IV. CONCLUSION

13. We have reviewed Ameritech's zone density pricing plan as supplemented, the comments thereon, the replies, and the additional supporting materials filed by Ameritech in this proceeding. We find that the Ameritech plan reasonably implements the zone density pricing scheme envisioned by the Commission in the *Special Access Order*. We therefore approve Ameritech's plan.

(Sprint) and Teleport Communications Group, Inc. (Teleport) did not specifically object to Ameritech's plan, but offered general observations concerning all the filed zone plans.

[11] On March 23, 1993, MFS filed an Emergency Petition to Hold Proceedings in Abeyance. On June 21, it filed a Supplemental Petition. In those petitions, MFS seeks deferral of the approval of the LECs' zone density plans until the Common Carrier Bureau completes its inquiry into the reasonableness of LEC special access volume and term discounts. The Bureau denied the MFS Petition insofar is it related to the zone plans approved in that Order. *See First Zone Density Order* at ¶ 36 and n.15. We deny MFS' petition insofar as it relates to the Ameritech zone plan for the same reasons stated in that Order.

[12] MFS Comments at 5-8; TDL Comments at 3-4.

[13] MFS Comments at 7-8.

[14] CompTel Comments at 5-7; Ameritech Reply at 3.

[15] Ameritech Reply at 3.

[16] CompTel Comments at 5-7.

[17] MFS Comments at 9-10, *citing* Ameritech Plan at 3.

[18] Ameritech Reply Comments at 3-4.

V. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, 47 U.S.C.§ 154(i), Section 0.91 of the Commission's Rules, 47 CFR § 0.91, and Section 0.291 of the Commission's Rules, 47 CFR § 0.291, the zone density pricing plan filed by the Ameritech Operating Companies IS APPROVED.

15. IT IS FURTHER ORDERED that the Emergency Petition to Hold Proceedings in Abeyance, and the Supplemental Petition, filed by MFS Communications Company, ARE DENIED to the extent they relate to the plan approved by this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

Metric Conversion of Parts 1, 2, 15, 18, 21, 22, 23, 25, 36, 61, 63, 68, 69, 73, 74, 76, 78, 80, 87, 90 and 94 of the Commission's rules

ERRATUM

Released: September 28, 1993

Due to a change to Section 87.187 in PR Docket No. 92-125 (FCC 93-216) that occurred after release of the Order in the above-captioned proceeding (FCC 93-184) and prior to its publication in the *Federal Register*, the second paragraph of the Part 87 amendatory text in the above-captioned proceeding is incorrect. This text is hereby revised to read as follows:

2. Paragraphs (l)(1), (b)(b) and (c)(c) in Section 87.187 are revised to read as follows:

Section 87.187 Frequencies.

* * * * *

(l) * * *

(1) The altitude of aircraft stations must not exceed 300 meters (1,000 feet), except for reconnaissance aircraft participating in icebreaking operations where an altitude of 450 meters (1,500 feet) is allowed;

* * * * *

(bb) The frequencies 121.950 MHz, 122.850[1] MHz and 127.050[1] MHz are authorized for air-to-air use for aircraft up to and including 3 km (10,000 ft) mean sea level in the vicinity of Grand Canyon National Park in Arizona within the area bounded by the following coordinates:

36-28-00 N. Lat; 112-47-00 W. Long.
36-28-00 N. Lat; 112-48-00 W. Long.
35-50-00 N. Lat; 112-48-00 W. Long.
35-43-00 N. Lat; 112-47-00 W. Long.

(cc) The frequency 120.650[1] MHz is authorized for air-to-air use for aircraft up to and including 3 km (10,000 ft) mean sea level within the area bounded by the following coordinates:

35-59-45 N. Lat; 114-51-45 W. Long.
36-09-30 N. Lat; 114-50-00 W. Long.
36-09-30 N. Lat; 114-02-55 W. Long.
35-54-45 N. Lat; 113-48-45 W. Long.
35-54-45 N. Lat; 114-41-45 W. Long.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

[1]Until further notice this frequency is available for air-to-air use as described in the Grand Canyon vicinity. Availability is a result of the FAA's assignment of this frequency. If the FAA reassigns this frequency the Commission may require air-to-air use to cease.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Shasta-Cascade Services, Inc. File No. 316ms0031

Notice of Apparent Liability for Forfeiture Penalty for Station KNKL908 in the Public Land Mobile Service at Yreka, California

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 1993; Released: October 7, 1993

By the Chief, Mobile Services Division:

1. On June 19, 1991, the Commission granted a developmental authorization to Shasta-Cascade Services, Inc. (Shasta) to operate on frequency 158.10 MHz at Yreka, California. On June 15, 1992, the Chief, Mobile Services Division issued a letter to Shasta setting forth the conditions of its developmental grant. The letter stated that Shasta was required to conduct field strength measurements to demonstrate that harmful electrical interference would not be caused to co-channel operations. These field strength measurements were to be performed quarterly and submitted within one year of commencement of operation in order for Shasta to apply for a permanent authorization. The conditions and requirements of the developmental grant are set forth in the Commission's *Public Notice*, Mimeo 30893, released May 2, 1980, a copy of which was enclosed with the letter notifying Shasta of the grant of the application on a developmental basis.

2. On June 18, 1992, Shasta filed its notification of completion of construction on FCC Form 489 (Notification of Status of Facilities), and therefore had until June 18, 1993, to submit four developmental reports that conclusively demonstrated interference-free operation to co-channel stations for it to be eligible to apply for permanent authorization. On June 18, 1993, Shasta filed only one developmental report and requested an extension of time to comply with the conditions of its developmental authorization. Because there have been no complaints of interference and Shasta states that 300 customers would lose service if the developmental authorization was terminated, Shasta's request for an extension of time will be granted.

3. Section 22.404(b) of the Commission's Rules states in pertinent part:

> Where some phases of the developmental program are not covered by the rules of this part, the Commission may specify supplemental or additional requirements or conditions in each case as it may deem necessary in the public interest, convenience or necessity.

4. Section 22.406(a) of the Commission's Rules states in pertinent part:

> Upon completion of the program of research and development, or, in any event, upon the expiration of the instrument of station authorization under which such investigations were permitted, or at such times during the term of the station authorization as the Commission may deem necessary to evaluate the progress of the developmental program, the licensee shall submit, in duplicate, a comprehensive report on the following items...

Therefore, because Shasta did not take the required measurements to obtain the requested information for the four quarterly reports required by the Division, pursuant to the Commission's Rules, in the June 15, 1992, letter, it is in apparent violation of Sections 22.404(b) and 22.406(a) of the Commission's Rules.

5. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certification, or other instrument of authorization issued by the Commission under this chapter... shall be liable to the United States for a forfeiture penalty.

We find that Shasta's failure to comply with the conditions and requirements of its developmental authorization constitutes willful and repeated conduct within the terms of the statute.[1]

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[1] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day. This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

6. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures*, FCC 93-382, released Aug. 12, 1993, the base forfeiture amount for failing to make required measurements or conduct required monitoring is $10,000. We find no adjustment factors under the *Policy Statement* present and, thus, we do not change the forfeiture amount.

7. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. Sec. 1.80, Shasta-Cascade Services, Inc. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Ten Thousand Dollars ($10,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

9. A copy of this Notice is being sent to Shasta-Cascade Services, Inc., 422-A Chestnut Street, Mt. Shasta, California 96067, by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-260

In the Matter of

Amendment of Section 76.51
of the Commission's Rules
to Include Marion, Indiana,
in the Indianapolis-Bloomington,
Indiana, Television Market

NOTICE OF PROPOSED RULE MAKING

Adopted: September 21, 1993; Released: October 7, 1993

Comment Date: November 4, 1993
Reply Comment Date: November 19, 1993

By the Chief, Mass Media Bureau:

1. Before the Commission is a petition for rule making filed June 9, 1993, by Marion T.V., Inc., licensee of television station WMCC-TV, Channel 23 (Independent), Marion, Indiana to amend Section 76.51 of the Commission's Rules, 47 C.F.R. §76.51, to change the designation of the Indianapolis-Bloomington, Indiana, television market to "Indianapolis-Bloomington-Marion, Indiana." *See Report and Order* in MM Docket No. 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).[1]

BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators. *See* 47 C.F.R. §76.658(m) and 17 U.S.C. §111(f). Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities. *See CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974). Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support. *See Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."[2]

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),[3] which amended Section 614 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. §614, requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. *See* Section 614(f) of the Act.[4] The Commission stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition.

THE PETITION

5. The petitioner initially notes that WMCC-TV was not operational in 1972 when the Commission adopted the Section 76.51 market listings (based upon Arbitron's market designations for 1970), and hence Marion, Indiana was not included in the Indianapolis-Bloomington market. It maintains, however, that WMCC-TV is today part of the Indianapolis market as designated by both Arbitron and Neilsen. In this regard, the petitioner states that the Indianapolis-Bloomington ADI is comprised of ten commercial television stations -- five licensed to Indianapolis (WHMB-Channel 40; WISH-Channel 8; WRTV-Channel 6;

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[1] The Commission has delegated to the Chief, Mass Media Bureau, authority to act on petitions for rule making seeking market redesignation and has stated that it expects "that requests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as rulemaking proposals." *See Report and Order* in MM Docket No. 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).

[2] *See, e.g., TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), *citing Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). *See, also, Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

[3] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[4] In connection with the implementation of the broadcast signal carriage ("must-carry") provisions of the Cable Act, the Commission concluded that a major update of Section 76.51 was not necessary based on the record then before it. Nevertheless, the Commission did make some minor revisions to Section 76.51 of the Rules, and announced that it would consider further revisions to the list of television markets on a case-by-case basis, delegating authority to act on such petitions to the Chief, Mass Media Bureau. *See Report and Order* in MM Docket No. 92-259, *supra*, hereinafter referred to as the "*Must-Carry Order*."

WTHR-Channel 13 and WXIN-Channel 59); three to Bloomington (WCLJ-Channel 42; WIIB-Channel 63 and WTTV-Channel 4); one to Kokomo (WTTV-Channel 29); and one to Marion (WMCC-Channel 23).

6. The petitioner asserts that WMCC-TV's Grade A contour covers Indianapolis and its Grade B signal covers all of Marion County, where Indianapolis is located. In comparing the coverage to the two Indianapolis UHF stations and the two Bloomington UHF stations, the petitioner states that WMCC-TV covers 47 percent of the ADI while the others cover from 41.1 to 48.3 percent of the ADI. Moreover, it states that WMCC-TV's Grade B signal substantially overlaps those of the other market stations and, because of transmitter locations roughly equivalent in distance from Indianapolis, the station's Grade B contour services essentially the same areas as the other cited UHF stations.

7. In addition, the petitioner states that it directly competes with other market-area stations for programming and advertisers. It states that WMCC-TV must compete with the other stations for the acquisition of syndicated programming, paying the same Indianapolis-Bloomington market rate due to the station's inclusion in the subject ADI. The petitioner also asserts that WMCC-TV's local advertisers are located in the Indianapolis ADI, with a significant percentage of such advertisers located in Indianapolis itself. The petitioner also notes that local television listings include WMCC-TV's program schedule. Despite this competitive environment, the petitioner states that the only two commercial stations not included in the market as listed in Section 76.51 are itself and Kokomo, and that the latter is a satellite of Station WTTV-Channel 4, in Bloomington. Thus, the petitioner contends, Station WMCC-TV is the only station "forced to operate under different rules than those applicable to all of its competitors in the ADI."

8. The essence of the petitioner's claim is that although WMCC-TV is competitive with the other stations listed, *supra*, amendment of the Commission's Rules as proposed is essential to reflect market realities and to equalize competition among the stations. Specifically, the petitioner states that while WMCC-TV is entitled to carriage on Indianapolis-Bloomington ADI cable systems under the Commission's new must-carry rules,[5] because Marion is not a designated community in the Section 76.51 market listings, the station would be considered a "distant signal" for purposes of compulsory copyright license liability if carried on certain cable systems in the ADI.[6] As a result, the petitioner states, it has already received notifications by several ADI area cable systems that they will not carry the station due to increased copyright liability attendant to the carriage of a "distant signal."[7]

9. The petitioner claims that although WMCC-TV has lost approximately one million dollars annually during each year of operation, it has kept the station on the air in the hope that the alleged "inequities" in the signal carriage and copyright laws are corrected to allow the station to be treated comparably to that of its market competitors. By amending Section 76.51 as requested, the petitioner maintains that an even playing field for all market-area stations will result without requiring WMCC-TV alone to pay prohibitively expensive copyright fees to assert its must-carry rights.

DISCUSSION

10. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before us that Station WMCC-TV and stations licensed to communities in the Indianapolis-Bloomington television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, Petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

ADMINISTRATIVE MATTERS

Ex Parte Rules -- Non-Restricted Proceeding

11. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

Comment Information

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before November 4, 1993, and reply comments on or before November 19, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

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[5] *See* Section 76.56(b) of the Commission's Rules.

[6] Stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-mile zones of all listed communities in a given hyphenated market. The absence of Marion as a designated community in this market list results in WMCC-TV's classification as a "distant signal" for market-area cable systems more than 35 miles from Marion.

[7] Section 76.58(d) of the Commission's Rules required a cable operator to notify all local television stations by May 3, 1993, that they may not be entitled to mandatory carriage on the system because such carriage may cause an increased copyright liability to the cable system. Under the provisions of Section 76.55(c)(2) of the Rules, a local commercial television station otherwise entitled to mandatory carriage need not be carried on market-area cable systems if the station is considered a "distant signal" under the copyright compulsory license (17 U.S.C. §111) and the station does not agree to indemnify the cable operator for the increased copyright liability. *See Report and Order* in MM Docket No. 92-259, *supra*, at 2973-74.

Initial Regulatory Flexibility Analysis

13. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601 (3) of the Regulatory Flexibility Act. A few television licensees will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Additional Information

14. For additional information on this proceeding, contact James A. Hudgens, Office of Plans and Policy, Federal Communications Commission (202) 653-5940.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: October 7, 1993

UNITED STATES TELEPHONE ASSOCIATION FILES PETITION FOR RULEMAKING TO REVISE THE COMMISSION'S PART 64 REQUIREMENTS FOR THE FILING OF COST ALLOCATION MANUALS BY CERTAIN LOCAL EXCHANGE CARRIERS

PUBLIC COMMENT INVITED

On September 9, 1993, the United States Telephone Association (USTA) filed a Petition for Rulemaking requesting the Commission to amend Section 64.903(a) of its rules by increasing the annual operating revenue threshold requirement for filing cost allocation manuals (CAMs) from $100 million to $1 billion. USTA claims that this would relieve a number of small carriers from burdensome CAM requirements. USTA states that at present, the proposed action would affect four companies: Puerto Rico Telephone Company, Rochester Telephone Corporation, Cincinnati Bell Telephone Company, and Lincoln Telephone and Telegraph Company.

We seek comment on USTA's proposal, and also on alternatives to USTA's proposal, such as increasing the annual operating revenue requirement threshold to: (1) $250 million; (2) $500 million; or (3) $750 million. Parties may file comments no later than **November 8, 1993**. Replies should be filed by **November 23, 1993**. Comments should reference RM 8354. A copy of each filing should be sent to Debbie Weber, FCC, Common Carrier Bureau, Accounting and Audits Division, 2000 L St., N.W., Room 812, Washington, D.C. 20554, and the International Transcription Service (ITS), 2100 M St., N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. USTA's petition is available for public inspection and copying at the Public Information and Reference Services (PIRS) office, 1919 M St., N.W., Room 230, Washington, D.C. Copies are also available from ITS.

For further information contact Debbie Weber at (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-254

In the Matter of

Limitations on Commercial Time on
Television Broadcast Stations

NOTICE OF INQUIRY

Adopted: September 23, 1993; Released: October 7, 1993

Comments due: November 29, 1993
Reply comments due: December 14, 1993

By the Commission: Chairman Quello and Commissioner Barrett issuing separate statements.

1. The Commission, on its own motion, is initiating this proceeding to evaluate the commercial programming practices of television broadcast stations. Specifically, we seek comment on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations.

BACKGROUND

2. Prior to 1984, the Commission had a longstanding policy precluding or discouraging television stations from devoting excessive time to commercial matter.[1] The Commission based this policy on the perception that excessive commercialization "subordinate[d] programming in the interest of the public to programming in the interest of its salability."[2] During this period, licensees were required to maintain detailed logs of their programming, partially to substantiate claims that they were in compliance with this policy. Moreover, the Commission frequently had to determine whether a particular program was a commercial, in order to determine whether it had been properly logged by the licensee.[3] Then, in 1984, after having deregulated commercial time for radio stations, the Commission similarly altered the manner by which it regulated commercial time for television stations.[4] Analyzing the effects of its commercial guidelines, the Commission determined that market forces, rather than Commission rules, were the decisive factor in determining the levels of commercialization for radio and television stations. The Commission therefore abolished the guidelines, concluding that competition would continue to regulate commercial excesses. Notably, the Commission retained its concern that programming in the public interest not become subordinated to programming in the interest of advertisers.[5] Indeed, the Commission stated that if the market were to fail to regulate commercial excesses, then it would be obligated to reconsider that aspect of deregulation.[6]

3. Upon the deregulation of commercial time in 1984, no television station had a programming format that consisted predominantly of sales presentations or program length commercials ("home shopping").[7] A small number of such stations had developed by 1987, when the Commission, stating that it had not contemplated this development, nevertheless found that the format was not contrary to the public interest.[8] However, the Commission at the same time noted that future developments could require it to reexamine that conclusion.[9]

4. In 1992, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").[10] Section 4(g) of the 1992 Cable Act added a new Section 614(g) to the Communications Act of 1934, as amended, 47 U.S.C. Sec. 534(g), which required the Commission to determine, regardless of prior proceedings, whether stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity.

5. Congress incorporated Section 4(g) with the general rules concerning the mandatory cable carriage ("must-carry") of commercial television stations.[11] That section of the 1992 Cable Act directed the Commission to consider three specific factors in making its public interest determination:

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[1] *See, e.g., En Banc Programming Inquiry*, 44 FCC 2203 (1960).
[2] *Id.* at 149.
[3] *See, e.g., Jimmy Lee Swaggart*, 29 RR 2d 400 (1974) (promotions of religious tours, books, records, and tapes must be classified and logged as commercial programming); *KISD, Inc.*, 22 FCC 2d 833 (1970) (when a record is played in conjunction with an advertisement for its sale, the duration of the play of the record must be computed as part of the commercial message); and *KCOP-TV, Inc.*, 24 FCC 2d 149 (1970) (when the commercial and noncommercial portions of a program are sufficiently intermixed, the entire program must be logged as commercial).
[4] *Report and Order* in MM Docket No. 83-670 (*Television Deregulation*), 98 FCC 2d 1076 at 1101-1105 (1984), *recon. denied*, 104 FCC 2d 357 (1986), *aff'd in part and remanded in part sub. nom Action for Children's Television v. F.C.C.*, 821 F.2d 741 (D.C. Cir. 1987). The Commission had already deregulated radio in the same manner. *Report and Order* in BC Docket No. 79-219 (*Radio Deregulation*), 84 FCC 2d 968 at 1007-08 (1981), *recon. denied*, 87 FCC 2d 797 (1981), *aff'd in part, reversed in part sub nom. Office of Communication of the United Church of Christ v F.C.C.*, 707 F.2d 1413 (D.C. Cir. 1983).
[5] *Television Deregulation* at 1105.
[6] *Radio Deregulation* at 1007-08.
[7] Our use of the term "home shopping" encompasses both sales presentations and program length commercials.
[8] *Family Media, Inc.*, 2 FCC Rcd 2540 (1987).
[9] *Id.* at 2542. As of December 22, 1992, Home Shopping Network, Inc., the major distributor of broadcast home shopping programming, had affiliation agreements with 105 television stations. These stations comprise less than 10% of the total number of commercial television stations currently licensed by the Commission.
[10] Pub. L. No. 102-385, 106 Stat. 1460 (1992).
[11] The must-carry rules are codified in Section 4 of the 1992 Cable Act, 47 U.S.C. 534. Section 4(g) required the Commission to qualify home shopping stations as local commercial television stations for the purposes of must-carry if it found that they were serving the public interest. If the Commission found that one or more such stations were not serving the public interest, however, then the Act required that the Commission provide them with reasonable time to provide different programming.

(1) the viewing of home shopping stations; (2) the level of competing demands for the spectrum allocated to such stations; and (3) the role of such stations in providing competition to nonbroadcast services offering similar programming. Based on our review of the record in that proceeding, we found that home shopping stations have been serving the public interest and are therefore qualified for must-carry status.[12]

DISCUSSION

6. The public interest requires that we periodically reassess our notion of that term in light of changing circumstances. A policy that serves the needs of the public at one time may become anachronistic or burdensome at a later time.[13] Section 4(g) of the 1992 Cable Act directed the Commission to evaluate the public interest status of home shopping stations based on three specified criteria and in relation to the must-carry rules. However, congressional debates on the 1992 Cable Act also reflected a more generalized concern with the issue of commercialism in broadcasting. Thus, we are initiating this inquiry to determine whether the public interest would be served by reestablishing limits on the amount of commercial matter that a television station can broadcast.

7. In analyzing this matter, we invite commenters to address whether and in what specific manner an excess of commercial programming disserves the public. Should the Commission reexamine the basic assumptions of the 1984 *Deregulation Order?* Specifically, should some measure besides public acceptance be used to define an "excess" of commercial programming, and, if so, what should it be? What is the effect on our 1984 conclusions of changes in the number of viewing options? Is there a distinction between "commercialism" as it was defined in the 1984 *Order*, and the various formats used for commercial programming as it exists today?

8. Commenters are also invited to address the form that any such regulation would take. If we find that the adoption of limits is warranted, should we enact a strict rule setting specific limits?[14] Should any commercial limits be based on the amount of commercial programming per hour, thereby precluding the broadcasting of program length commercials, or should they be based on some longer period of time that would allow for infomercials and extended sales presentations? Would licensees have greater flexibility in fulfilling their public interest obligations if we were instead to adopt informal processing guidelines (i.e., we would not grant under delegated authority applications for new stations or for the sale or renewal of existing stations, if the applicants aired or proposed more than a certain level of commercialization)?[15] We also ask commenters to address how we would ensure compliance with any limit on commercialization. For example, should we again require television station licensees to maintain logs of their commercial programming, or would certification of compliance be sufficient? Finally, we request that commenters address the First Amendment implications of any proposed limitations on commercial programming.[16]

Procedural Matters

9. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **November 29, 1993** and reply comments on or before **December 14, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) at the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

10. For further information concerning this *Notice of Inquiry*, please contact Paul R. Gordon, (202) 632-6357, Mass Media Bureau, Video Services Division, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[12] *Report and Order* in MM Docket No. 93-8 (*Home Shopping Stations)*, 8 FCC Rcd 5321 (1993), *petition for reconsideration pending.*

[13] *Compare Mayflower Broadcasting Corp.*, 8 FCC 333 (1941) (broadcast editorials held to violate the public interest) with *Opinion on Editorializing by Broadcasters*, 13 FCC 1246 (1949) (broadcast editorials held not to violate the public interest).

[14] Only with regard to children's programming do we now impose such limits. 47 C.F.R. Sec. 73.670.

[15] Such guidelines existed prior to our 1984 television deregulation decision. *Amendments to Delegations of Authority*, 43 FCC 2d 638 (1973).

[16] In that regard, we note the Supreme Court's recent admonition that government regulations not "place too much importance on the distinction between commercial and noncommercial speech." *City of Cincinnati v. Discovery Network, Inc.*, No. 91-1200, slip op. at 14 (U.S. March 24, 1993).

Separate Statement
of
Chairman James H. Quello

In the Matter of Limitations on Commercial Time of Television Broadcast Stations.

The 1992 Cable Act directed the Commission to determine whether television stations that are "predominantly utilized for the transmission of sales presentations or program length commercials" serve the public interest and therefore qualify for "must carry" status. Last June, the Commission found that such stations do serve the public interest under the analysis suggested by the Cable Act.

At that time, however, I indicated that it would be appropriate for the Commission to initiate a more general reexamination of the issue of commercialism as it relates to the public interest. This *Notice of Inquiry* is the result.

I support this *Notice* not because I believe that the Commission should alter its previous conclusions, but because the Communications Act assumes that the FCC will continue to reevaluate the meaning of the phrase "public interest, convenience and necessity." In particular, the Commission must adjust its interpretation of the statute to account for changes in the media environment and in technology.

The public interest standard of the Communications Act is the basic statutory charter under which broadcasters operate. But while the overall requirement is a constant, its meaning changes over time to account for the evolution of the mass media, consumer needs and audience expectations. As I noted in a separate statement in the home shopping decision, the "public interest" may best be understood by gaining some historical perspective. In view of this new *Inquiry*, I believe some of that history bears reviewing.

When Congress enacted the Radio Act of 1927, it borrowed the expression "public interest, convenience or necessity" from the field of railroad regulation but did not independently define the term.1 The Communications Act of 1934, which superseded the Radio Act and created the FCC, continued to leave the term "public interest" undefined.2

Congress purposefully left the regulatory standard open, with the details to be filled in by the FCC over time. This had much to do with the fact that radio was a new and complicated technology. The FCC's broad powers were based on the assumption that "Congress could neither foresee nor easily comprehend . . . the highly complex and rapidly expanding nature of communications technology."3 The Supreme Court affirmed in *FCC v. Pottsville Broadcasting Co.*, that the public interest standard is "as concrete as the complicated factors for judgment in such a field of delegated authority permit," and noted that the approach is "a supple instrument for the exercise of discretion."4

The public interest is not just a flexible standard; it is expressly forward-looking. For example, in 1983 Congress added a new section to the Act establishing "the policy of the United States to encourage the provision of new technologies and services to the public."5 The Supreme Court similarly has recognized that "because the broadcast industry is dynamic in terms of technological change[,] solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence."6

Consequently, I believe the Act directs the FCC to gauge the public interest by looking to the future, not the past. It simply is impossible to define the public interest merely by examining what it may have meant in 1929, or even 1969. A quick survey of past decisions underscores this point.

The Commission has revised its substantive public interest requirements over time in response to changing conditions. In 1941, the Commission decided that broadcast editorials violated the public interest, only to reconsider that policy eight years later.7 Similarly, in 1945 the Commission withheld renewal of a radio station license until the station agreed to sell time for paid editorials to the United Auto Workers.8 Since then, however, the Commission determined that licensees cannot be forced to sell time to a particular group. This more current view of the public interest was upheld by the Supreme Court.9

Even when the basic policies do not change, the Commission has modified their application.

This has occurred because our understanding of the public interest undoubtedly has evolved along with society. Audience needs and expectations are not the same today as they were in the early days of radio.

Certainly audience sensibilities have changed. For example, in late 1937, hundreds of radio listeners complained about an episode of NBC's "Charlie McCarthy" program in which Charlie McCarthy and Mae West portrayed the title characters in a sketch entitled "Adam and Eve." The Commission investigated the matter and found nothing in the script objectionable. But some of Mae West's inflections were considered "suggestive." On this basis, the Commission sent NBC and its affiliates letters concluding that the program was "vulgar , immoral or of such other character as may be offensive to the great mass of right-thinking, clean-minded American citizens."[10]

Of course, the Commission continues to actively enforce the indecency rules as part of the basic statutory requirement for broadcasters. I have been, and continue to be, a vocal supporter of the rules' enforcement in appropriate cases. But I think it may be just a bit unrealistic to use the same measure for "offensiveness" in 1993 that the Commission employed over half a century ago. The public interest *requirement* may be the same, but its *application* is quite different as conditions change.

The same is true for some of the Commission's other programming requirements. For example, eight Georgia radio stations were given only temporary renewals in 1958 because the stations were devoted to a "news and music" format. The Commission informed the stations by letter that full-term license renewals had been denied because their program schedules consisted "almost entirely of recorded music."[11] I doubt that the public interest would be served if the Commission imposed this rigid view on the radio industry today.

Similar examples abound. The Commission has suggested in the past that the public interest was not served when stations scheduled commercials within news programs, or when they aired "too many" soap operas.[12] In 1937 the Commission questioned the license renewal of a station that produced a program called "The Friendly Thinker" that offered advice on business affairs, love and marriage. Although the show's host was not an astrologer and disclaimed any supernatural powers, the Commission noted that such advice programs were objectionable because they tended to mislead the public. The Commission renewed the license only after the station discontinued the program.[13] If such a view of the public interest prevailed today, many, if not most, licenses would be at risk.

Our approach to broadcast advertising also has evolved. In 1936, the Commission ordered a renewal hearing for a licensee that had aired commercials that made "exaggerated claims" for a weight loss product.[14] Just imagine the number of minor celebrities that would have to find honest work if the Commission mounted a new crusade to ensure the effectiveness of diets.

On a more basic level, the notion of what may be considered "excessive" advertising has changed over time. In 1930, William S. Hedges, then president of the National Association of Broadcasters, testified before Congress regarding the quantitative advertising limits that the NAB then enforced. He said that at his station, "no more than one minute out of the 30 minutes is devoted to advertising sponsorship. In other words, the radio listener gets 29 minutes of corking good entertainment, and all he has to do is to learn the name of the organization that has brought to him this fine program."[15]

Not only does today's audience expect to give up more than a minute in exchange for a corking good sitcom, the Commission concluded that those viewers are the best judge of how much advertising is too much. The Commission found in 1984 that the number of alternatives available to viewers is the best protection against over-commercialization. The tyranny of the remote control provides an adequate check on broadcast stations that must increasingly compete for viewers.[16]

Such an approach was unthinkable to the Federal Radio Commission. In fact, in 1928 it expressly rejected the argument that listeners could shift away from "irksome" broadcasts in a decision placing four stations on probation. The FRC noted that the listeners' "only alternative, which is not to tune in on the station, is not satisfactory, particularly when in a city such as Erie only the local stations can be received during a large part of the year. When a station is

[devoted to excessive advertising] the entire listening public is deprived of the use of a station for a service in the public interest."[17]

It is beyond dispute that the current Commission must consider a very different media environment than did the FRC. The number of television stations increased by 50 percent between 1975 and 1992; more than half of all households receive ten or more over-the-air TV signals; over 90 percent of all households are passed by cable and over 60 percent subscribe; the average cable subscriber receives more than 30 channels; other competitive video providers are increasingly available, and national DBS service is anticipated next year.[18] The Commission's recent decision to curtail the financial interest and syndication rules recognizes that broadcast television now faces stiff competition from other media. In just a few years, the broadcast networks have experienced sharp declines in their audience shares, from over 90 percent in the mid-1980s to less than 60 percent today.[19]

Given these developments, I think that the Commission's interest in preventing over-commercialization is far different today than we may have considered necessary in the past.[20] While I think that it is entirely appropriate to raise the issue of commercialism and the public interest, we are obligated by the structure and purpose of the Communications Act to look to the future, and not to simply parrot homilies from the past.

I intend to keep these principles in mind as this *Inquiry* progresses.

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[1]The Radio Act directed the Federal Radio Commission to perform its various tasks, including classifying radio stations, describing the type of service to be provided, assigning frequencies, making rules to prevent interference, establishing the power and location of transmitters and establishing coverage areas in a way that maximized the public good. Of course, this begged the essential question of what constitutes "the public good." The FRC took the position that the Supreme Court eventually would define the public interest case by case. Nevertheless, it outlined the primary attributes of the public interest in its policy statements and licensing decisions.

[2]*Office of Communication of the United Church of Christ v. FCC*, No. 81-1032, slip op. at 27 (D.C. Cir., May 10, 1983) ("the [Communications] Act provides virtually no specifics as to the nature of those public obligations inherent in the public interest standard"). Despite the lack of a categorical definition of the public interest, various provisions of the Act operationally define at least part of what Congress intended. For example, the Act directs the FCC to provide, to the extent possible, rapid and efficient communication service, adequate facilities at reasonable charges, provision for national defense and safety of lives and property, and a fair, efficient and equitable distribution of radio service to each of the states and communities.

[3]*National Ass'n. of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 638 n.37 (D.C. Cir. 1976).

[4]309 U.S. 134, 138 (1940).

[5]47 U.S.C. § 157.

[6]*CBS v. Democratic National Committee*, 412 U.S. 94, 102 (1973).

[7]*Compare Mayflower Broadcasting Corp.*, 8 F.C.C. 333 (1941) with *Opinion on Editorializing by Broadcasters*, 13 F.C.C. 1246 (1949). *See also Syracuse Peace Council*, 2 FCC Rcd. 5043 (1987), *aff'd sub nom. Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied*, 110 S. Ct. 717 (1990) (Fairness Doctrine does not serve the public interest); *FCC v. League of Women Voters of California*, 468 U.S. 364, 378 (1984) (ban on editorials by public broadcast stations is unconstitutional).

[8]*E.g.*, *United Broadcasting Co.*, 10 F.C.C. 515 (1945).

[9]*CBS, Inc. v. Democratic National Committee*, 412 U.S. 94, 122 (1973) (broadcasters may not be compelled to provide a generalized right of access to discuss controversial issues).

[10]*See* "FCC Issues Rebuke for Mae West Skit," *Broadcasting*, January 15, 1938 at 13.

[11]*See* "Closed Circuit," *Broadcasting*, March 31, 1958 at 5; "Closed Circuit," *Broadcasting*, July 7, 1958 at 10.

[12] *See generally Public Service Responsibility of Broadcast Licensees* (March 7, 1946) (the "*Blue Book*").

[13] *Radio Broadcasting Corp.*, 4 F.C.C. 125 (1937).

[14] *Don Lee Broadcasting System*, 2 F.C.C. 642 (1936).

[15] Senate Committee on Interstate Commerce, Hearings on S. 6, 71st Cong., 2d Sess. (1930). William S. Paley of CBS similarly testified that seven-tenths of one percent of the network's air time was devoted to advertising. *Id.*

[16] *The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C.2d 1076, 1101-05 (1984), *aff'd in relevant part sub nom. Action for Childrens Television v. FCC*, 821 F.2d 741 (D.C. Cir. 1987).

[17] FRC Decision on Stations WRAK, WABF, WBRE and WMBS, discussed in the *Blue Book* at p. 41.

[18] *See Review of the Commission's Regulations Governing Television Broadcasting*, MM Docket No. 91-221, FCC 92-209 (released June 12, 1992).

[19] *Evaluation of the Syndication and Financial Interest Rules*, 58 Fed. Reg. 28927 (May 18, 1993).

[20] It is important to acknowledge that "the 'public interest' standard necessarily invites reference to First Amendment principles." *CBS, Inc. v. Democratic National Committee*, 412 U.S. at 122. Additionally, many of the Commission's prior policies on commercialism predated the extension of First Amendment protection to commercial speech. And most recently, the Supreme Court has cautioned that government regulations should not "place too much importance on the distinction between commercial and noncommercial speech." *City of Cincinnati v. Discovery Network, Inc.*, No. 91-1200, Slip op. at 14 (U.S. March 24, 1993). Any evaluation of the constitutional "worth" of speech that is based on the percentage of editorial content compared to advertising material is a very suspect proposition. Newspapers, which receive full First Amendment protection, generally strive for a ratio of about 70 percent advertising to 30 percent editorial content. *See* C. Fink, *Strategic Newspaper Management* 43 (1988).

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

Re: Notice of Inquiry Regarding Commercial Limits for Television Broadcast Stations

On July 22, 1993, the Commission determined that home shopping stations satisfied public interest criteria and therefore qualified for must-carry status.[1] In this proceeding, the Commission has adopted a Notice of Inquiry seeking comments on whether it is in the public interest to reestablish limits on the amount of commercial matter broadcast on television stations.

I write separately to underscore the importance of making certain that the Notice does not create one standard for home shopping stations and another for other commercial matter broadcast by television licensees. Home shopping stations must not become the sole focus of the Notice. Instead, we must ascertain the need for establishing guidelines for commercial matter across all broadcast stations.

Along these same lines, I am concerned that we do not make determinations based upon program content only. Considerations premised on such issues raise subjective First Amendment concerns and create an unnecessarily contentious environment.

Over the years, commercial matter on television stations have appeared in a variety of formats. In this docket, I believe the Commission must focus on whether it is necessary to impose any limits on commercial matters for broadcast stations.

[1]Home Shopping Stations, Report and Order in MM Docket No. 93-8, 58 FR 39156 (July 22, 1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Part 97 of the
Commission's Rules Regarding
the Amateur Radio Service.

ORDER

Adopted: September 24, 1993; Released: October 7, 1993

By the Chief, Private Radio Bureau:

1. Section 97.21 of the Commission's Rules, 47 C.F.R. § 97.21, currently provides that each application for an amateur service license and each application for a reciprocal permit for alien amateur licensee must show, among other things, a station location in an area where the amateur service is regulated by the FCC. The rule also provides that the station location must be a place where a station can be physically located.

2. In order to expedite the processing of amateur service license applications, it is desirable to delete the requirement that a station location be specified on the application. Further, because portable and mobile equipment is currently widely used in the amateur service, a station's location when transmitting often changes, sometimes even daily.

3. We believe that this rule amendment is not likely to be controversial. Further, it relates to a nonsubstantive change in the Commission's licensing procedures. The notice and comment provisions of Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, therefore, need not be complied with. Authority for this action is contained in Section 0.331(a)(1) of the Commission's Rules, 47 C.F.R. § 0.331(a)(1).

4. Accordingly, Section 97.21, IS AMENDED, effective November 15, 1993, as set forth in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

APPENDIX

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 97 - Amateur Radio Service

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

2. Section 97.21 is revised to read as follows:

§ 97.21 Mailing address.

Each application for an amateur service license and each application for a reciprocal permit for alien amateur licensee must show a mailing address in an area where the amateur service is regulated by the FCC. The mailing address must be one where the licensee can receive mail delivery by the United States Postal Service.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SPRINT COMMUNICATIONS COMPANY, L.P.,
Complainant,

v.

U S WEST COMMUNICATIONS, INC.,
Defendant.

File No. E-92-108

ORDER

Adopted: September 30, 1993; Released: October 7, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On September 24, 1992, Sprint Communications Company, L.P. (Sprint) filed the above-captioned complaint against U S West Communications, Inc., (U S West) seeking damages resulting from U S West's alleged violations of the Commission's rate of return prescription for the period January 1, 1989 through December 31, 1990. On September 27, 1993, Sprint and U S West filed a joint motion to dismiss the complaint stating that a mutually agreeable settlement of all pending controversies has been reached.

2. We are satisfied that granting the parties' motion to dismiss the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of the Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated in Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the parties' Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-163

In the Matter of

Amendment of Section 73.202(b)	RM-8251
Table of Allotments,	
FM Broadcast Stations.	
(Wilson Creek, Washington)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 29, 1993; Released: October 8, 1993

By the Assistant Chief, Allocations Branch:

1. At the request of Wilson Creek Broadcasting Company ("petitioner"), permittee of Station KVYF-FM, the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 4115 (1993), proposing the substitution of Channel 277C3 for Channel 277A at Wilson Creek, Washington, and the modification of Station KVYF-FM's construction permit to specify operation on the higher powered channel. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted.[1]

2. We believe that the public interest would be served by substituting Channel 277C3 for Channel 277A at Wilson Creek, Washington, since it would provide the community with a wide coverage area FM service. Channel 277C3 can be allotted to Wilson Creek in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (16.6 miles) southeast at petitioner's requested site.[2] Since Wilson Creek is located within 320 kilometers (200 miles) of the U.S-Canadian border, concurrence by the Canadian government has been obtained. In accordance with Section 1.420(g) of the Commission's Rules, we will modify Station's KVYF-FM's construction permit to specify operation on Channel 277C3 at Wilson Creek.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 22, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Wilson Creek, Washington.	277C3

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Wilson Creek Broadcasting Company for Station KVYF-FM, IS MODIFIED to specify operation on Channel 277C3, in lieu of Channel 277A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Wilson Creek Broadcasting Company, permittee of Station KVYF-FM, is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] As stated in the *Notice*, petitioner's request was signed, but failed to include an affidavit verifying that the statements contained in its petition were accurate, as required by Section 1.52 of the Commission's Rules. Petitioner was requested to correct the deficiency in its responsive comments and has complied accordingly.

[2] The coordinates for Channel 277C3 at Wilson Creek are North Latitude 47-22-00 and West Longitude 119-00-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-171

In the Matter of

Amendment of Section 73.202(b), RM-8257
Table of Allotments,
FM Broadcast Stations.
(Lindsborg and Sterling,
Kansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 23, 1993; Released: October 8, 1993

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4278 (1993) (*"Notice"*), issued in response to a petition filed by E. Jerry Davies and Diane Davies d/b/a JD Communications ("petitioner"), proposing the substitution of Channel 238C3 for Channel 240A at Lindsborg, Kansas.[1] Petitioner also requested modification of its license for Station KQNS-FM, Channel 240A, to specify operation on Channel 238C3. The *Notice* specified that to accommodate petitioner's proposal, it would be necessary either to delete vacant Channel 239A at Sterling, Kansas, or, in the event applications were filed during the comment period in this proceeding, to substitute Channel 234A for Channel 239A at Sterling. Petitioner submitted late-filed comments reiterating its intention to apply for the channel.[2] Ad Astra per Aspera Broadcasting, Inc. ("Ad Astra") filed an application for Channel 239A at Sterling and comments supporting retention of a channel in the community.

2. We believe the public interest would be served by the substitution of Channel 238C3 for Channel 240A at Lindsborg, Kansas, since it will provide expanded reception service to the community. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's specified site.[3] To accommodate the Lindsborg upgrade, we will substitute Channel 234A for Channel 239A at Sterling, Kansas. Channel 234A can be allotted to Sterling in compliance with the Commission's spacing requirements without a site restriction.[4] Our *Notice* proposed the deletion of the Channel 239A at Sterling premised on a lack of interest because the Channel had been vacant and unapplied for since the window opened in October 1991. However, an application (File No. BPH-930831MF) filed by Ad Astra, on a first-come, first-serve basis, removes the basis for deletion of the channel at Sterling. Our engineering analysis indicates that Channel 234A can be utilized at the site selected by Ad Astra.[5] Ad Astra will be permitted to amend its application to specify operation on Channel 234A and will retain cut-off protection.[6] We will authorize a modification of petitioner's license for Station KQNS-FM, Channel 240A, to specify operation on Channel 238C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 22, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Lindsborg, Kansas	238C3
Sterling, Kansas	234A

4. IT IS FURTHER ORDERED, That the Secretary of the Commission, Shall Send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Joseph P. Benkert
Hopper and Kanouff
1610 Wynkoop Street
Suite 200
Denver, Colorado 80202-1196
(counsel for Ad Astra Per
Aspera Broadcasting, Inc.)

Ad Astra Per Aspera
Broadcasting, Inc.
106 N. Main Street
Hutchinson, Kansas 67501

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KQNS-FM, Channel 240A, IS MODIFIED to specify operation on Channel 238C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

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[1] An application (File No. BALH-920817HO) for assignment of license from Smoky Hill Broadcasting Co., Inc. to E. Jerry Davies and Diane Davies was granted on October 5, 1992 and consummated on October 26, 1992.

[2] In conformance with the Commission's general policy of accepting late-filed comments where the proceeding is uncontested, we will accept petitioner's comments for the purpose of permitting a continuing expression of interest in Channel 238C3 at Lindsborg. *See Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988).

[3] The coordinates for Channel 238C3 at Lindsborg are 38-40-00 and 97-41-30.

[4] The coordinates for Channel 234A at Sterling are 38-12-42 and 98-12-12.

[5] The coordinates for the application site are 38-10-17 and 98-14-28.

[6] Ad Astra will be served with a copy of this *Report and Order*.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, JD Communications, licensee of Station KQNS-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-202

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lewiston, Idaho and Clarkston, Washington) RM-8229

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 29, 1993; Released: October 8, 1993

By the Assistant Chief, Allocations Branch:

1. Pursuant to the request of Lewiston/Clarkston Christian Broadcasters ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4758 (1993), proposing the allotment of Channel 286A to Lewiston, Idaho, as that community's fourth local FM service, and the allotment of Channel 275A to Clarkston, Washington, as that community's second local FM service. Petitioner filed comments restating its intention to apply for the respective channels, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 286A to Lewiston, Idaho, as that community's fourth local FM service, and the allotment of Channel 275A to Clarkston, Washington, as that community's second local service. Channel 286A can be allotted to Lewiston in compliance with the Commission's minimum distance separation requirements without a site restriction.[1] Channel 275A can be allotted to Clarkston in compliance with the Commission's minimum distance separation requirements without a site restriction.[2]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 22, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Lewiston, Idaho	243C1, 268C1, 286A, 295C
Clarkston, Washington	231C, 275A

4. The window period for filing applications for Channel 286A at Lewiston, Idaho, and Channel 275A at Clarkston, Washington, will open on **November 23, 1993,** and close on **December 23, 1993**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 286A at Lewiston are North Latitude 46-24-42 and West Longitude 117-01-12.
[2] The coordinates for Channel 275A at Clarkston are North Latitude 46-24-42 and West Longitude 117-03-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-166

In the Matter of

Amendment of Section 73.202(b), RM-8242
Table of Allotments,
FM Broadcast Stations.
(Rexburg, Idaho and
Afton, Wyoming)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 29, 1993; Released: October 8, 1993

By the Assistant Chief, Allocations Branch:

1. At the request of Communicast Consultants, Inc. ("petitioner"), permittee of Station KRXK-FM, Channel 251C3, Rexburg, Idaho, the Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 8 FCC Rcd 4176 (1993), proposing the substitution of Channel 251C1 for Channel 251C3, and modification of its construction permit to specify the higher power channel. In order to accomplish the upgrade, petitioner also requested the substitution of Channel 254A for Channel 252A at Afton, Wyoming, and modification of the license issued to Wyoming Radio for Station KRSV(FM). Petitioner filed comments restating its intention to apply for Channel 251C1 at Rexburg. No other comments were received.

2. We believe that the public interest would be served by the substitution of Channel 251C1 for Channel 251C3 at Rexburg, Idaho, since it would enable Station KRXK-FM to expand its coverage area. In order to accommodate the upgrade, we will also substitute Channel 254A for Channel 252A at Afton, Wyoming. An engineering analysis has confirmed that Channel 251C1 can be allotted to Rexburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 32.2 kilometers (20 miles) south of the community.[1] In addition, Channel 254A can also be allotted to Afton at the authorized site of Station KRSV(FM).[2] As requested, we will modify the construction permit for Station KRXK-FM to specify Channel 251C1 at Rexburg, and the license for Station KRSV(FM) will be modified to specify Channel 254A.

3. Petitioner restates its willingness to reimburse the licensee of Station KRSV(FM) for all reasonable and necessary expenses incurred with the change in channels at Afton. *See Circleville, Ohio*, 8 FCC 2d 159 (1967).

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 22, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Rexburg, Idaho	251C1
Afton, Wyoming	254A

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Station KRXK-FM, Channel 251C3, Rexburg, Idaho, IS MODIFIED, to specify operation on Channel 251C1 in lieu of Channel 251C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KRSV(FM), Channel 254A, Afton, Wyoming, IS MODIFIED, to specify operation on Channel 254A in lieu of Channel 252A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the station authorization except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the station authorization except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

[1] The coordinates for Channel 251C1 at Rexburg are North Latitude 43-32-34 and West Longitude 111-53-07.
[2] The coordinates for Channel 254A at Afton are North Latitude 42-51-02 and West Longitude 110-58-46.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, the permittee of Communicast Consultants, Inc., is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

8. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensee for Station KRSV(FM) as follows: Western Wyoming Radio, P.O. Box 1210, Afton, Wyoming 83110.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-168

In the Matter of

Amendment of Section 73.202(b),	RM-8241
Table of Allotments,	
FM Broadcast Stations	
(Lena, Illinois)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 29, 1993; Released: October 8, 1993

By the Assistant Chief, Allocations Branch:

1. Pursuant to the request of Jane Lucas ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4181 (1993), proposing the allotment of Channel 271A to Lena, Illinois, as that community's first local aural transmission service. Petitioner filed reply comments restating her intention to apply for Channel 271A, if allotted. No other comments were received.[1]

2. We believe the public interest would be served by allotting Channel 271A to Lena, since it could provide a first local aural transmission service to that community. As indicated in the *Notice*, Channel 271A can be allotted to Lena in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.5 kilometers (5.3 miles) south.[2]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 22, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Lena, Illinois	271A

4. The window period for filing applications will open on **November 23, 1993,** and close on **December 23, 1993.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] In conformance with the Commission's general policy of accepting late-filed comments where the proceeding is uncontested, we have accepted petitioner's comments for the purpose of allowing petitioner to restate her interest in applying for Channel 271A at Lena. *See Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988).

[2] The coordinates for Channel 271A at Lena are North Latitude 42-18-27 and West Longitude 89-47-45.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-60

In the Matter of

Co-Channel Protection Criteria for Part 90, Subpart S Stations Operating Above 800 MHz — RM-8028

REPORT AND ORDER

Adopted: September 22, 1993; Released: October 8, 1993

By the Commission:

I. INTRODUCTION

1. This *Report and Order* amends Section 90.621 of the Commission's Rules, 47 C.F.R. § 90.621, to revise the co-channel interference protection criteria for private land mobile radio (PLMR) base stations operating above 800 MHz in all Part 90, Subpart S service pools. The current minimum co-channel station separation of 113 km (70 mi) will remain as the standard for assignments of Specialized Mobile Radio (SMR) stations and will now also be applied to non-SMR stations operating in the 800/900 MHz bands.[1] Distances of proposed stations that are less than 113 km (70 mi) from existing co-channel stations will be determined through use of a Short-Spacing Separation Table (hereinafter Table), with the distances in the Table calculated based on the requirement that the 22 dBu signal strength contour of a proposed station does not fall within the 40 dBu signal strength contour of an existing station (hereinafter 40/22 dBu). This action will simplify the rules under which Subpart S systems are authorized, thereby reducing the burden on both the applicant and the Commission in the licensing process.

II. BACKGROUND

2. Our current rules and procedures provide for different methodologies for processing applications for Specialized Mobile Radio (SMR) stations and non-SMR stations operating in the 800/900 MHz bands. In essence, pursuant to Section 90.621(b) of our Rules, applications for co-channel SMR stations are processed and granted if the stations are generally separated by a minimum distance of 113 km (70 mi), while applications for co-channel non-SMR stations are, in accordance with Sections 90.621(c) and (d) of our Rules, processed and granted if the stations are separated by distances that result if the 40 dBu contour of an existing station is not overlapped by a proposed station's 30 dBu contour, commonly referred to as the 40/30 dBu protection criteria.[2] SMR stations can, however, be located closer than 113 km (70 mi) to co-channel stations by either obtaining consent from all co-channel licensees located within 113 km (70 mi), by using a Table in Section 90.621(b)(4) in which the station separations are determined from the 40/22 dBu protection criteria, or by seeking a waiver of Section 90.621(b) by showing protection to co-channel stations in accordance with the 40/30 dBu criteria.[3]

3. In recent years, advances in equipment performance and system design have resulted in an increased interest in low-power, multi-site private land mobile operations above 800 MHz. These advances have prompted industry concern regarding the continued viability of the current protection criteria used to separate 800/900 MHz co-channel stations, particularly in the non-SMR services. The National Association of Business and Educational Radio, Inc. (NABER) therefore petitioned us to provide the same 40/22 dBu protection criteria for co-channel stations in the Business and General Category Radio Pools that we afforded SMR systems in the Table.[4]

4. In response to NABER's Petition, we issued a *Notice of Proposed Rule Making* (*Notice*) that proposed to establish the same co-channel interference protection criteria for all 800/900 MHz stations operating pursuant to Part 90, Subpart S.[5] The proposed rules would establish 113 km (70 mi) as the minimum distance between co-channel stations and would adopt a Table that employs the 40/22 dBu criteria to determine appropriate distances for all Subpart S applicants wishing to locate stations less than 113 km (70 mi) from other co-channel stations without seeking a waiver of Section 90.621(b). We also asked whether the 40/30 dBu protection ratio should continue to be used as our criteria for determining station separation distances (e.g., in seeking a waiver of Section 90.621(b)) or whether 40/22 dBu is a more appropriate co-channel station protection criteria. The *Notice* also requested comments on the use of the Commission's R-6602 curves (upon which the current separations are based), and if other propagation prediction methodologies or means of determining station separations, whether performed by the applicant, a frequency coordinator, or the Commission, would be more appropriate. Comments were also requested on the issue of co-channel interference to and from mobile units, including the effect of limiting mobile unit effective radiated power (ERP). Twelve comments and seven replies were filed in response to the *Notice*.[6]

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[1] An exception to the 113 km (70 mi) minimum separation distance is made for certain specific high elevation sites in the States of California and Washington where the minimum co-channel station separation is 168 km (105 mi).

[2] *See* Second Report and Order, Docket No. 18262, 46 FCC 2d 773-775 (1974). Generally, the 40/30 dBu protection criteria results in a co-channel station separation of 113 km (70 mi) for stations operating at maximum facility parameters of 1000 watts effective radiated power (ERP) and 305 meters (1000 ft) antenna height above average terrain (HAAT).

[3] *See* Report and Order, PR Docket No. 90-34, 6 FCC Rcd 4929 (1991).

[4] Petition for Rulemaking, RM-8028, filed on March 6, 1992.

[5] *Notice of Proposed Rule Making*, PR Docket No. 93-60, 8 FCC Rcd 2454 (1993).

[6] Individual comments were filed by the Legislative Affairs Committee of the Region-20 Public Safety Plan Review Committee (Region-20), Fleet Call, Inc. (Fleet Call), Motorola, Inc. (Motorola), Utilities Telecommunications Council, (UTC), E.F.

III. DISCUSSION

Co-Channel Interference Protection Criteria

5. The *Notice* proposed to replace our current 40/30 dBu co-channel station separation criteria with a criteria that assumes a desired signal level of 40 dBu at the edge of a station's service area and permits an undesired (interfering) signal level of 22 dBu at this 40 dBu contour. At these signal levels, an interference protection of 18 dB is provided to a mobile operating at the edge of the station's service area. Comments were requested on whether the 40/22 dBu criteria is appropriate, and if not, what the correct protection criteria should be.

6. The use of the proposed 40/22 dBu protection criteria was supported by many commenters.[7] The Joint Commenters, however, propose a more conservative protection criteria of 40/10 dBu, with the desired and undesired contour distances both taken from the R-6602 F(50,50) curves.[8] They claim that the R-6602, F(50,10) curves[9] -- now used to determine the undesired or interference contour distance -- work fairly well at longer distances, but are inaccurate at distances less than 40 miles and should be abandoned. The Joint Commenters, therefore, propose that a 12 dB correction factor (which, they contend, compensates for the difference between the F(50,50) and F(50,10) curves) be applied to the F(50,50) curves when determining the distance to the interference contour.[10] The Joint Commenters state that their methodology will enable co-channel assignments to be sufficiently far apart to minimize interference and yet will retain the basic premise of a 32 km (20 mi) service area and a 113 km (70 mi) station separation.

7. Our objective in this proceeding from the outset was to balance interference protection and spectrum reuse considerations when determining the appropriate interference protection criteria for these systems. While the Joint Commenters proposed 40/10 dBu ratio would provide greater interference protection because of larger separations between stations, it does so at the cost of spectrum efficiency. Furthermore, based on the record in this proceeding, and as discussed later, we are unable to conclude that the R-6602 curves are inadequate. After analysis of the comments, therefore, we conclude that a protection ratio greater than 18 dB is not warranted. A 40/22 dBu desired to undesired signal ratio will result in co-channel station spacings that will provide reasonable protection from co-channel interference and, at the same time, provide for efficient re-use of this valuable spectrum. We, therefore, will utilize the 40/22 dBu ratio as our criteria for the licensing of co-channel stations when such stations are separated by less than 113 km (70 mi).

SMR and Non-SMR Systems

8. In the *Notice*, we stated that there was no apparent reason to have different protection criteria for SMR and non-SMR systems. We noted that non-SMR and SMR system designs are becoming similar and thus the applicable interference protection criteria should be the same. We also observed that separate protection criteria for SMR and non-SMR systems were restrictive, potentially confusing, and also burdensome from a licensing standpoint. We, therefore, proposed to amend the applicable rules to establish the same co-channel interference protection criteria for all Part 90, Subpart S, operations.

9. Commenters support having the same interference protection criteria for both SMR and non-SMR systems.[11] UTC states that because frequencies in the various 800 MHz pools are subject to intercategory sharing, applicants are increasingly requesting waivers to operate on frequencies outside of their own category. Good spectrum management, UTC claims, requires that the same interference criteria apply to all 800 MHz systems.[12] We agree and therefore conclude that both SMR and non-SMR stations should be licensed in accordance with the 113 km (70 mi) standard that currently applies to SMR stations. We also conclude that the 40/22 dBu criteria, when used to license stations separated by less than 113 km (70 mi), provides sufficient protection to *all* Part 90, Subpart S stations operating above 800 MHz, including existing Public Safety systems.[13] Therefore, we are adopting rules that will establish 40/22 dBu as the co-channel protection criteria for all Part 90, Subpart S stations, when such stations are separated by less than 113 km (70 mi).

Johnson Company (E.F. Johnson), Federal Express Corporation (Fed Ex), Texas Utilities Electric Co. (TUE) Southern California Edison Company (SCE), New York City Transit Authority (Authority), and New Haven Fire Service (New Haven). Joint comments were filed by the City of Alexandria, VA Police Department and Department of General Services, (Alexandria), and the National Association for Business and Educational Radio, Inc., Industrial Telecommunications Association, Inc., American Mobile Telecommunications Association, Inc., and Motorola, Inc. (Joint Commenters). Reply comments were filed by the Joint Commenters, Fleet Call, Commonwealth Edison Co., (CECo), Commercial Engineering Corporation (CEC), Southern California Gas Company (SCG), Advanced MobileComm (AMI), and the City of Alexandria, VA Police Department and Fire Department.

[7] *See* Comments of Alexandria, Fleet Call, UTC, E.F. Johnson, Fed Ex, TUE, SCE, CECo, and SCG.

[8] FCC Report No. R-6602, Figure 29.

[9] FCC Report No. R-6602, Figure 30.

[10] Comments of Joint Commenters at 9 and 10.

[11] In comments at ¶ ¶ 11-15, Region-20 agrees with a 40/22 dBu protection ratio for non-Public Safety systems but proposes that Public Safety systems be afforded protection based on a more conservative 40/5 dBu protection ratio.

[12] Comments of UTC at 4.

[13] Public Safety system designers have chosen to use a 40/5 dBu criteria to determine spacings for systems in the 821-824/866-869 MHz Public Safety band. This band is designated for exclusive Public Safety use and frequency assignments are made in accordance with communications plans developed by each individual public safety region (See § 90.621(i)). Frequencies in the 806-821/851-866 MHz band are available to all eligibles under the intercategory sharing provisions of Section 90.621(g). Thus, to have a separate criteria for Public Safety systems that operate outside of the 821-824/866-869 MHz band would be counterproductive and difficult to administer. We, therefore, will not adopt Region-20's recommendation that we implement a 40/5 dBu ratio when short-spacing to an existing co-channel Public Safety system, and a 40/22 dBu ratio when short-spacing to an existing co-channel non-Public Safety system.

Co-Channel Station Separations/Short-Spacing Separation Table

10. In developing the current Table in Section 90.621(b)(4) of our Rules, we employed a 40/22 dBu criteria to determine permitted co-channel station separation distances between existing stations and proposed stations operating at various transmitter powers and antenna heights. This provided what we considered to be an appropriate degree of protection to existing co-channel licensees from applicants wishing to locate their stations less than 113 km (70 mi) away without requesting waiver of Section 90.621 or obtaining consent of the co-channel licensee. The *Notice* proposed to amend the Table by providing protection to existing stations in accordance with their licensed transmitting powers and antenna heights, rather than, as in the current Table, in accordance with the maximum power and antenna height that a station may be authorized. The Table proposed in the *Notice* was also based upon a 40 dBu desired signal distance determined from the R-6602, F(50,50) curves and a 22 dBu undesired signal distance determined from the R-6602, F(50,10) curves. The proposed Table also retained 113 km (70 mi) as the distance between maximum facility stations (i.e. 1000 w ERP and 305 m antenna height), and established 80 km (50 mi) as the minimum short-spacing distance regardless of station parameters.

11. The majority of the commenters support the proposed Table. The Joint Commenters, however, suggest a Table with distances calculated by their proposed 40/10 dBu protection criteria (*see* para. 6, *supra.*). For each possible combination of transmitter power and antenna height shown in their Table, the separation is determined in both directions, i.e., proposed station to existing station and vice-versa, with the larger distance thus determined being the indicated distance for that pair of entries.[14] As a result of using this procedure, in addition to an existing station's 40 dBu service contour being protected from the 10 dBu interference contour of a proposed station, the 40 dBu contour of a proposed station would be protected from the 10 dBu contour of the existing station. The Joint Commenters assert that this Table will be workable for systems in the actual land mobile environment.[15] Fleet Call, on the other hand, claims that the Table proposed in the *Notice* is based upon a theoretical propagation model and that because there is virtually no empirical data at this time to accurately determine short-spacing distances for low-power stations, the current Table adopted in PR Docket No. 90-34 should be retained.[16] Fleet Call also claims that they and other SMRs are investing large sums to implement enhanced digital systems under current co-channel separation parameters, and that significantly different standards could require costly redesign and construction delays. Fleet Call asks to defer any revisions to the existing Table until completion of the Expanded Mobile Service Provider (EMSP) proceeding,[17] claiming that the proposed Table will impede the development of wide-area digital SMR systems.[18] Alexandria proposes prohibiting short-spacing to public safety systems operating on General Category frequencies.[19]

12. Commenters generally agree that the current 113 km (70 mi) separation should be retained for maximum facility stations and that a minimum separation be required regardless of proposed or existing station parameters. We disagree with Fleet Call that because virtually no empirical data is available demonstrating the real-world effects of more intensive short-spacing, that we retain the current short-spacing table in the Rules, which protects all existing stations as if they were operating with maximum facilities.[20] For reasons given previously, we are not convinced that the Joint Commenters' procedure to use a 40/10 dBu protection criteria with station separations determined only from the R-6602, F(50,50) curves is appropriate. We also do not agree with the Joint Commenters' procedure to calculate distances in both directions (*see* para. 11, *supra.*), and use the larger distances thus obtained. This procedure would provide greater separations than needed and would also severely restrict a proposed low-power facility from locating less than 113 km (70 mi) from an existing high-power facility (as shown in footnote 14). Furthermore, the underlying effect of the Joint Commenters' proposal would be to dictate to a proposed licensee the amount of interference that that licensee could accept from an existing licensee. It has never been our policy to require that a prospective private land mobile radio licensee provide a particular quality of service over a given area, and we do not believe it would be appropriate at this time to impose such a requirement, e.g., through an approach used in the Joint Commenters' suggested Table.

13. The Table proposed in the *Notice* was based upon protecting an existing station in accordance with its licensed transmitting power and antenna height. This concept was proposed because we believed that it would result in more efficient use of available spectrum by permitting closer short-spacing distances. However, upon further analysis, we believe that permitting a proposed station to be short-spaced to an existing station by a distance determined from the existing station's current transmitting power would reduce the station's flexibility should it be necessary

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[14] For example, using the Joint Commenters' 40/10 protection criteria, the station separation calculated for an existing station operating at 500 w ERP and 305 m antenna height and a proposed station operating at 62 w ERP and 54 m antenna height is 93 km (Case 1) and the station separation calculated for an existing station operating at 62 w/54 m and a proposed station operating at 500 w/305 m is 109 km (Case 2). In this instance, under the Joint Commenters' proposed Table, both entries would be the 109 km distance calculated using the Case 2 parameters.

[15] Comments of Joint Commenters, Exhibits 4 and 5.

[16] Comments of Fleet Call at 5 and 7.

[17] Notice of Proposed Rule Making, PR Docket No. 93-144, released June 9, 1993, 8 FCC Rcd 3959 (1993).

[18] Reply Comments of Fleet Call at 7.

[19] Comments of Alexandria at ¶ 6.

[20] The current short-spacing table was established to provide a conservative procedure for applicants wishing to short-space without seeking a waiver of Section 90.621(b). The table thus provided protection to existing stations in accordance with a 40/22 dBu interference criteria and assumed that existing stations were operating at maximum facilities (i.e., 1000 watts and 305 meters). However, the table, and the parameters used in creating the table, did not establish our co-channel interference criteria. That criteria was reflected in our adopted procedures for those seeking a waiver of Section 90.621(b). In these procedures we indicated that such applicants need only provide 40/30 dBu protection to existing stations (*see* Report and Order, PR Docket No. 90-34, 6 FCC Rcd 4929, note 41).

to increase transmitter power to overcome operational deficiencies. We believe that existing stations should be afforded flexibility to modify transmitter power and thus the Table that we are adopting specifies separations calculated with the assumption that, regardless of a station's licensed transmitting power, it will be protected as though it were operating at its maximum allowable power, i.e., 1000 watts ERP and at its licensed antenna height. This is consistent with the Commission's current policy applicable to requests for waiver of Section 90.621(b). In our *Report and Order* in PR Docket No. 90-34, we indicated that protection criteria would be calculated using an existing co-channel licensee's maximum permissible transmitting power and its actual height.[21] We, therefore, are adopting a Short-Spacing Separation Table, derived from a 40/22 dBu protection criteria that specifies separations between proposed and existing stations determined from using a proposed station's intended transmitting ERP and antenna directional height above average terrain (DHAAT), and assuming that an existing station is transmitting with a maximum allowable ERP of 1000 watts at its licensed antenna height (and resultant DHAAT). The Table does not provide for station separations less than 88 km (55 mi). We believe that this approach offers a balance between increased spectrum efficiency, adequate co-channel protection, and administrative convenience.

Alternative Showings/Waiver Requests

14. The Joint Commenters state that there may be situations where the use of a short-spacing table may be inefficient or inappropriate. They propose that an applicant should have the option of an "alternative showing" under criteria similar to those provided for in PR Docket No. 90-34 for applicants seeking waiver of Section 90.621(b) of our Rules.[22] Fed Ex agrees that applicants should be required to comply with the separations in the Table, but proposes that exceptions to the Table be considered by a waiver request supported by an engineering submission, using procedures other than R-6602 and based on 40/22 dBu criteria, and taking extenuating terrain features into consideration.[23] Fed Ex further proposes that waiver requests should be accompanied by a statement that the applicant has attempted to reach consensus among affected co-channel licensees.[24] UTC also proposes that an applicant have the option of using the Table or determining the distance based on actual contours.[25]

15. We believe that the new rules and Table that we are adopting will accommodate the vast majority of applications for short-spacing co-channel stations, while protecting existing operations. We note, however, that unusual circumstances, such as the effects of terrain shielding, may justify occasional exceptions to the Table. If an applicant can justify that a lesser separation than that indicated in the Table will result in equal or greater protection to an existing station, it may request a waiver. No special provisions in the rules, however, will be made for alternative showings. With respect to Fed Ex's proposal that waiver requests be accompanied by a statement of attempted co-channel consensus, we do not believe that such a statement is necessary. Applicants requesting waivers of the Table are currently required to serve all co-channel licensees with such applications and supporting material, and those licensees will have an opportunity to oppose these requests. See 47 C.F.R. § 90.621(b)(4). Furthermore, in view of the consensual provisions of Section 90.621(b)(5) that facilitates granting of short-space requests, our knowledge of unsuccessful attempts to obtain consensus serves little purpose.

Propagation Prediction Methodology

16. The *Notice* requested detailed comments on whether the Commission's R-6602 curves are adequate or if another methodology would be more suitable for determining the separations in typical land mobile propagation predictions. Eleven commenters addressed this issue. While not specifically recommending its use, Region-20 submitted comments with calculations based upon the Bullington model. As discussed previously, the Joint Commenters propose modified use of the R-6602 curves. UTC states that a more accurate methodology for predicting field strength should be implemented, but makes no specific recommendation.[26] E.F. Johnson states that R-6602 is administratively convenient, but that flat and high elevation terrain factors need to be included to obtain a more accurate reflection of protection requirements.[27] TUE, SCE, CECo, and SCG all favor the replacement of R-6602 with NBS Tech Note 101.[28] Fed Ex comments that while R-6602 does not represent the realities of RF propagation in the land mobile environment, the relative simplicity of applying a table to a short-space situation outweighs the complexity and ambiguities inherent in attempting to apply a modern terrain-based propagation model to each and every proposed short-spaced station.[29] CEC recommends discarding the use of R-6602 because the R-6602 methodology does not consider interference to base station receivers, and that any replacement methodology consider this factor.[30] Motorola states that R-6602 often does not reliably predict the extent of a licensee's service area and proposes that any review and analysis of a replacement propagation model should be addressed separately from this proceeding.[31]

17. An analysis of the comments indicates that there is no clear consensus as to whether the continued use of R-6602 is justified or what the replacement propagation analysis model should be. While the comments do provide arguments concerning claimed deficiencies in the R-6602 methodology, the administrative convenience coupled with the lack of a clear mandate as to a replacement lead us to conclude that a decision in this matter cannot be made at this time. Because of the importance of this issue along with the technical complexities involved, we concur with

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[21] *See* Report and Order, PR Docket No. 90-34, 6 FCC Rcd 4929 (1993), note 41.
[22] Comments of Joint Commenters at 17.
[23] Comments of Fed Ex at 4.
[24] Comments of Fed Ex at 4.
[25] Comments of UTC at 6.
[26] Comments of UTC at 4.
[27] Comments of E.F. Johnson at 6.
[28] Comments of TUE at 6, SCE at 5, Reply Comments of CECo at 4, and SCG at 3.
[29] Comments of Fed Ex at 2.
[30] Comments of CEC at 2.
[31] Comments at Motorola at 5. It should be noted that, although Motorola suggests that the issue of a new propagation prediction model be addressed separately at a later date, as a member of the Joint Commenters, it supports their proposed modified use of R-6602 at this time.

Motorola that this issue should be addressed in a separate proceeding. We, therefore, are deferring action on this issue until a later date.

Interference To/From Mobile Units

18. During the petition stage of this proceeding, commenters claimed that harmful interference could occur both to and from mobile units when co-channel stations operating at distance separations determined under the old 40/30 dBu criteria. In the *Notice*, we indicated that the proposed use of the 40/22 dBu criteria would do much to minimize co-channel interference from mobile units to short-spaced base stations. We asked for comments on this issue, specifically as to what effect limiting mobile ERP may have, and any other factors that may contribute to potential interference to or from mobile units.

19. Commenters addressing this issue presented varying views. Region-20 states that the 40/22 dBu base-to-base protection criteria will not be adequate to minimize co-channel harmful interference from short-spaced mobile stations to existing base station receivers.[32] Fleet Call claims that there is concern that mobiles operating at and beyond the reliable service contour of their own base stations may cause harmful interference to non-affiliated co-channel base stations, and that the Commission must be certain that permitting closer spacing of SMR systems does not exacerbate co-channel interference to authorized SMR systems.[33] The Joint Commenters state that their proposed separation table will help reduce potential for mobile interference because it is more conservative than the current Table based on the 40/22 dBu criteria. The Joint Commenters add that, to provide additional protection, mobiles in a system with low ERP (less than 100 watts) could be limited to 6 dB less than the base station or repeater ERP. UTC claims that no additional protection is necessary with the 40/22 dBu Table.[34] E.F. Johnson argues that the 40/22 dBu criteria will help alleviate mobile interference concerns, but that the Commission may wish to revisit this issue as low-power systems proliferate.[35] Fed Ex claims that the majority of land mobile radio stations today still exhibit a base station transmit advantage, and that any reduction in mobile transmit power would only degrade system performance.[36]

20. As in any base/mobile radio system, there is always the possibility that far-ranging mobiles may cause interference to another system's co-channel base station receivers. Utilizing 40/22 dBu protection, a mobile unit operating at the edge of its base station's service area should still be sufficiently far from a co-channel base station receiver to minimize the potential for interference. Furthermore, to minimize interference from mobiles that may operate beyond their service area, our Table provides that co-channel base stations will not be permitted to be located closer than 88 km (55 mi) from each other. The Joint Commenters also state that to provide additional protection from potential mobile interference, the Commission could consider that in low-power systems (less than 100 watts ERP) mobiles be limited to an ERP that is 6 dB less than the system ERP. We believe that this approach would severely limit the effectiveness of low-power systems that already have low-power base stations. To further lower the mobile power could make such systems almost unusable. Therefore, while we acknowledge the potential of interference from mobile units, we do not believe that there is sufficient justification to place any additional limits on mobile power.[37]

Miscellaneous Issues

21. *Reduction of maximum transmitter power and antenna height.* We asked for comment on whether there would be any significant advantage if the maximum station parameters of 1000 watts ERP and 305 m (1000 ft) antenna height were reduced. While most commenters did not offer opinions, UTC suggests that the current maximum facility parameters should be retained. Absent strong arguments regarding these parameters, we will retain the maximum transmitter power/antenna height limits currently in the Rules.

22. *Consolidation of certain rules.* We also asked for comments on whether separate rules are still needed for various types of stations having different operational modes, locations, and service area requirements. Again, most commenters did not address this issue. E.F. Johnson, however, while recognizing that separate rules governing different types of systems are burdensome, suggests that the proposed Table addresses many of the concerns regarding different types of stations.[38] Fed Ex also recommends using the same ERP/AAT ratios for both conventional and trunked systems, and suggests removing system differentiation terminology in the current Rules that relate to the high elevation sites described in Sections 90.621(b)(1), (b)(2), and (b)(3).[39] While we believe there is merit to consolidating the rules that provide for certain transmitter powers, antenna heights, and areas of service for different types of private land mobile radio systems, we will delay any such efforts to a subsequent proceeding that sets forth specific and detailed proposals for commenters to focus upon. Accordingly, in this proceeding we will retain Part

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[32] Comments of Region-20 at 2.
[33] Comments of Fleet Call at 6.
[34] Comments of UTC at 8.
[35] Comments of E.F. Johnson at 9.
[36] Comments of Fed Ex at 6.
[37] The separation distances in the Table are provided primarily to minimize base-to-mobile interference. Because the Table truncates at 88 km (55 mi) due to the potential for mobile-to-base interference, any waivers requesting separations less than this distance must include an analysis of the potential for such interference.
[38] Comments of E.F. Johnson at 8.
[39] These rule sections denote separation distances at specified high elevation sites in California and Washington only for trunked systems. When the 800 MHz rules were established in PR Docket No 79-191, we stated that it was our intention to provide interference protection to licensees of exclusive channels, and that licensees on non-exclusive channels would not be protected from other co-channel users. Therefore, because trunked systems are assigned on an exclusive basis, Sections 90.621(b)(1), (b)(2), and (b)(3) were adopted referencing separations only for trunked systems. There may, however, be conventional systems at high elevations sites specified in the Rules that either have or will obtain sufficient mobile loading to qualify for exclusivity. Therefore, to enable such a conventional system to enjoy the same protection criteria as a trunked system, we are amending Sections 90.621(b)(1), (b)(2), and (b)(3) to extend the additional separation to all stations that have been afforded exclusivity.

90. Subpart S rules in their current form except to the extent that they are otherwise amended by the specific proposals adopted herein.[40]

23. *High elevation stations.* The Joint Commenters suggest that co-channel station separations greater than 113 km (70 mi) be afforded to all stations located at very high elevations and offer three proposed methods for calculating the appropriate separation distances for these stations.[41] SCG also contends that rule exemptions governing co-channel separations, transmitter power levels, and antenna heights should be developed specifically for stations west of the Continental Divide.[42] The issue raised by the Joint Commenters and SCG -- that of providing co-channel separation distances of greater than 113 km (70 mi) for high elevation sites -- is complex and also deserves the attention of interested parties for comments on specific and detailed proposals set forth for their consideration. Here, however, we do not have adequate information on which to base a change to our current 113 km (70 mi) protection standard in the current rules. Accordingly, this issue also must be delayed until another proceeding is initiated to explore specific proposals relative to 800/900 MHz stations at high elevations.

24. There may be instances, however, when a proposed station desires to short-space to an existing station (i.e. locate less than 113 km (70 mi) from an existing station) where either one or both of the stations are at very high elevations. In addressing this instance, we considered the Joint Commenters three suggested distance calculation methods. After review of the methods, we conclude that the Joint Commenters' DHAAT/Linear method should be used to determine the necessary station separation required to obtain additional protection when short-spacing stations at very high elevation sites. We, therefore, will adopt its use. This procedure requires the calculation of the DHAAT of each existing co-channel station within 169 km (105 mi) of the proposed facility both towards the proposed facility and vice versa. For DHAAT values greater than 458 m (1500 ft), the required separation given in the Table for 305 m (1000 ft) is used, and 1.6 km (1 mi) is added for every 30.5 m (100 ft), or increment thereof, of DHAAT above 458 m (1500 ft). When both the existing and proposed stations have DHAAT's in excess of 458 m (1500 ft), the additional distances must be separately determined for each station and the combined distances are added to the distance obtained from the Table. Separations thus determined, however, shall not exceed 113 km (70 mi). Accordingly, we are adopting a rule that permits increased co-channel separations for stations desiring to be short-spaced when high elevation sites at any location in the country are involved. The Commission will employ this procedure when analyzing short-spacing requests and will require that the relevant coordinators do the same.

25. *Mexican border offset channels.* By agreement with Mexico, the 811-816/856-861 MHz band is assigned for exclusive U.S. use in the U.S./Mexico border area. Also, the 816-821/861-866 MHz frequency band is shared in the U.S./Mexico border zone by both countries, with each country assigned alternate frequencies. Frequencies in both of these bands are offset by 12.5 kHz from the primary frequencies used in the United States outside of the border zone.[43] In their comments, the Joint Commenters state that because the Rules make no provision for station separations and interference protection between the offset and primary channels, stations on primary channels have been licensed in close proximity to existing stations on offset channels. The Joint Commenters further argue that with the advent of digital modulation, the use of 12.5 kHz offsets becomes essentially the same as co-channel operation because a large portion of one transmitter's energy falls in-band to a receiver offset by 12.5 kHz. They then propose that offset operations in the Mexican border region be treated as co-channel with each overlapping primary frequency, and that any new authorizations should meet the adopted co-channel short-spacing criteria.[44] Fleet Call and AMI endorse the Joint Commenters proposal.[45]

26. The Joint Commenters state that under current rules, it would be possible to authorize operations on offset and primary channels at close distances, thus greatly increasing the chances of interference between such stations. The inherent protection of about 10 dB obtained because of the 12.5 kHz frequency separation would not be sufficient if the stations were closely spaced.[46] Fleet Call and AMI, in reply comments, support the Joint Commenters' suggestion.[47] On this issue, we concur with the commenters and are amending our rules, therefore, to require that applications for stations located adjacent to the U.S./Mexico border area that request frequencies in the 811-821/856-866 MHz band must consider existing stations in the U.S./Mexico border area that operate on offset frequencies 12.5 kHz removed as co-channel stations. Such applications will be required to comply with the co-channel separation provisions of Section 90.621(b). Existing authorizations as of the adoption date of the instant rule making will be grandfathered.

IV. CONCLUSION

27. In this *Report and Order*, we are adopting rule changes that will maximize the availability of short-spacing options for all Part 90, Subpart S stations operating above 800 MHz, while at the same time providing adequate interference protection to co-channel licensees. We believe that this action will simplify the rules concerning both SMR and non-SMR systems and, from a licensing standpoint, will significantly reduce the burden upon both the applicant and the Commission.

28. On November 11, 1992 the Chief, Private Radio Bureau issued an Order (DA 92-1570) announcing that the Bureau would, until further notice, return without action all applications requesting waiver of Section 90.621(b) of the Commission's Rules. In the *Notice* in this proceeding,

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[40] Additionally, with the adoption, in this proceeding, of short-spacing protection based on the 40/22 dBu criteria, we amend Section 90.621(b)(6) to now protect those stations identified in this section in accordance with a 22 dBu interference contour rather than a 30 dBu interference contour.

[41] Comments of Joint Commenters at 11-15. The three methods are called, DHAAT/Radio Horizon, DHAAT/Linear, and Fixed Mileage/HAAT.

[42] Reply Comments of SCG at 8-10.

[43] The use of offset frequencies permits frequencies to be used in the border zone that would not be normally be permitted because of the 105 mile reuse restriction of Section 90.621(b)(1) of the Rules.

[44] Comments of Joint Commenters at 15-17.

[45] Comments of Fleet Call at note 11 and Reply Comments of AMI at 2.

[46] Comments of Joint Commenters at 15-17.

[47] Reply Comments of Fleet Call at 8, and AMI at 2-4.

we announced that, until the proceeding is terminated, we would not accept applications for 800/900 MHz systems, both SMR and non-SMR, unless such applications met the conditions set forth in Section 90.621(b). With the termination of this proceeding and the adoption of new rules under Section 90.621(b), we will, on the effective date of the rules adopted in this *Report and Order*, once again accept those applications whose receipt was suspended by the Private Radio Bureau's *Order* (DA 92-1570) and the *Notice* in this proceeding.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

29. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

Need for and Purpose of this Action

30. This *Report and Order* amends Part 90 of the Commission's Rules to revise the interference protection criteria and separations for co-channel private land mobile radio stations operating above 800 MHz. This action will simplify the rules concerning these stations and will reduce the burden on both the applicant and the Commission during the application procedure.

Issues Raised in Response to the Initial Regulatory Flexibility Analysis

31. None of the commenters specifically addressed the Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered and Rejected

32. The Commission considered all of the alternatives in this proceeding and considered all of the timely filed comments in the *Notice of Proposed Rule Making*. Aside from maintaining the *status quo*, there are no alternatives other than considered in this *Report and Order*.

VI. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 332(a)(2), Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in the Appendix below effective [thirty days after publication in the Federal Register].

34. IT IS FURTHER ORDERED that, effective [30 days after publication in the Federal Register], the suspension of the receipt of applications for 800/900 MHz systems not in accordance with the conditions set forth in 47 C.F.R. § 90.621(b), as ORDERED in the *Notice*, PR Docket No. 93-60, para. 24, 8 FCC Rcd 2454 (1993) and the suspension of the receipt of applications for SMR systems not in accordance with 47 C.F.R. § 90.621(b), as ORDERED in the *Order*, DA 92-1570, 7 FCC Rcd 7659 (1992), ARE TERMINATED.

35. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90 - PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.621 is amended by revising paragraph (b) introductory text, paragraph (b)(1), the first sentence of paragraph (b)(2) introductory text, the first sentence of paragraph (b)(3), paragraph (b)(4), paragraph (b)(6), adding paragraph (b)(7), removing paragraphs (c) and (d), and redesignating paragraphs (e), (f), (g), (h), (i) and (j) as paragraphs (c), (d), (e), (f), (g) and (h), respectively, to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this Subpart, except for those stations authorized pursuant to paragraph (g) of this section, will be afforded protection solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with the following exceptions:

(1) Except as indicated in paragraph (b)(4) of this section, no station shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

(2) The separation between co-channel stations that have been granted exclusivity and that are located at high sites in California north of 35^0N Latitude and west of 118^0W Longitude shall be determined as follows: * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations that have been granted channel exclusivity and are located in the State of Washington at the following locations shall be separated from co-channel stations by a minimum of 169 km (105 mi). * * *

(4) Upon an applicant's specific request to the Commission or a frequency coordinator, co-channel stations may be separated by less than 113 km (70 mi) by meeting certain transmitter ERP and antenna height criteria. The following Table indicates separations assignable to such co-channel stations for various transmitter power and antenna height combinations. The minimum separation permitted is 88 km (55 mi). Applicants will provide the Commission with a statement that the application is submitted for consideration under the Table, a list of all co-channel stations within 113 km (70 mi), and the DHAATs and ERPs for these stations and the applicant's proposed station. Applicants seeking to be licensed for stations located at distances less than those prescribed in the Table are required to secure a waiver and must submit with the application, in addition to the above, an interference analysis, based upon any of the generally-accepted terrain-based propagation models, that shows that co-channel stations would receive the same or greater interference protection than provided in the Table. Requests for separations less than 88 km (55 mi) must also include an analysis of interference potential from mobile transmitters to existing co-channel base station receivers. Applicants seeking a waiver must submit with their application a certificate of service indicating that concurrent with the submission of the application to the Commission or a coordinator, all co-channel licensees within the applicable area were served with a copy of the application and all attachments thereto. Licensees thus served may file an opposition to the application within 30 days from the date the application is filed with the Commission.

(i) The directional height of the antenna above average terrain (DHAAT) is calculated from the average of the antenna heights above average terrain from 3 to 16 km (2 to 10 mi) from the proposed site along a radial extending in the direction of the existing station and the radials 15 degrees to either side of that radial.

(ii) Except for the sites listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section, additional co-channel distance separation must be afforded to an existing station from an applicant wishing to locate a station less than 113 km (70 mi) from a co-channel station, where either the applicant's or the existing station is located at sites with DHAATs of 458 m (1500 ft) and above. The separation between short-spaced co-channel stations shall be determined as follows:

(A) Calculate the DHAAT in each direction between every existing co-channel station within 113 km (70 mi) and the proposed station.

(B) In the Table, locate the approximate ERP and DHAAT values for the proposed and existing stations.

(C) When DHAAT values are greater than 458 m (1500 ft), use the required separation for 305 m (1000 ft) and add 1.6 km (1 mi) for every 30.5 km (100 ft), or increment thereof, of DHAAT above 458 m (1500 ft) to the distance indicated in the Table. If both the proposed and existing stations have DHAATs of 458 m (1500 ft) or more, the additional distance is separately determined for each station and the combined distance is added to the distance obtained from the Table. Protection to existing stations will be afforded only up to 113 km (70 mi).

SHORT-SPACING SEPARATION TABLE

Proposed Station ERP (watts) / DHAAT (m) [3]	Distance Between Stations (km) [1] [2]						
	Existing Station DHAAT (meters) [3]						
	305	215	150	108	75	54	37
1000/305	113	113	113	113	113	113	113
1000/215	113	113	113	113	113	113	110
1000/150	113	113	113	113	112	108	103
1000/108	113	113	113	110	107	103	98
1000/75	113	112	108	103	100	96	91
1000/54	113	109	105	100	97	93	88
1000/37	109	104	100	95	92	88	88
500/305	113	113	113	113	113	113	110
500/215	113	113	113	112	109	105	100
500/150	113	112	108	103	100	96	91
500/108	112	107	103	98	95	91	88
500/75	107	102	98	93	90	88	88
500/54	103	98	94	89	88	88	88
500/37	99	94	90	88	88	88	88
250/305	113	113	113	112	109	105	100
250/215	113	113	107	102	99	95	90
250/150	109	104	100	95	92	88	88
250/108	105	100	96	91	88	88	88
250/75	99	94	90	88	88	88	88
250/54	95	90	88	88	88	88	88
250/37	91	88	88	88	88	88	88
125/305	113	111	107	102	99	95	90
125/215	108	103	99	94	91	88	88
125/150	103	98	94	89	88	88	88
125/108	98	93	89	88	88	88	88
125/75	93	88	88	88	88	88	88
125/54	88	88	88	88	88	88	88
125/37	88	88	88	88	88	88	88
62/305	108	103	99	94	91	88	88
62/215	103	98	94	89	88	88	88
62/150	97	92	88	88	88	88	88
62/108	92	88	88	88	88	88	88
62/75	88	88	88	88	88	88	88
62/54	88	88	88	88	88	88	88
62/37	88	88	88	88	88	88	88

[1] Separations for stations on Santiago Peak, Sierra Peak, Mount Lukens, and Mount Wilson (CA) and the locations in the State of Washington listed in § 90.621(b)(3) are 56 km (35 mi) greater than those listed in the Table above. In the event of conflict between this

Table and the table of additional California high elevation sites shown in § 90.621(b)(2), the latter will apply.

[2] Distances shown are derived from the R-6602 curves and are based upon a non-overlap of the 22 dBu (F50,10) interference contour of the proposed station with the 40 dBu (F50,50) contour of the existing station(s). No consideration is given to the 40 dBu service contour of the proposed station and the 22 dBu contour of the existing station(s). The minimum separation of stations will be 88 km (55 mi).

[3] All existing stations are assumed to operate with 1000 watts ERP. When the ERP and/or DHAAT of a proposed station or the DHAAT of an existing station is not indicated in the Table, the next higher value(s) must be used.

* * * * *

(6) A station located closer than the distances provided in this section to a co-channel station that was authorized as short-spaced under paragraph (b)(4) of this section shall be permitted to modify its facilities as long as the station does not extend its 22 dBu contour beyond its maximum 22 dBu contour (i.e., the 22 dBu contour calculated using the station's maximum power and antenna height at its original location) in the direction of the short-spaced station.

(7) Offset frequencies in the 811-821/856-866 MHz band for use only within the U.S./Mexico border area, as designated in Section 90.619(a), shall be considered co-channel with non-offset frequencies in this band as designated in Section 90.613. New applications for frequencies in this band for stations adjacent to the U.S./Mexico border area must comply with the co-channel separation provisions of this section.

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

MM Docket No. 93-155

In re Application of

RICHARD BOTT II (Assignor) File No. BAPH-920917GO

and

WESTERN COMMUNICATIONS, INC.
(Assignee)

For Assignment of Construction
Permit of Station KCVI(FM),
Blackfoot, Idaho

ORDER

Adopted: October 1, 1993; Released: October 8, 1993

By the Commission:

1. On June 25, 1993, Richard Bott II filed a Petition for Leave to File Petition for Reconsideration and a Petition for Reconsideration of an order, *Richard Bott II*, 8 FCC Rcd 4074 (1993), designating the subject assignment application for hearing.[1] Also before the Commission is an unopposed Request for Dismissal of "Petition for Leave to File Petition for Reconsideration" and "Petition for Reconsideration," filed August 18, 1993 by Bott. The Request for Dismissal will be granted.[2]

2. ACCORDINGLY IT IS ORDERED, That the Request for Dismissal of "Petition for Leave to File Petition for Reconsideration" and "Petition for Reconsideration" filed August 18, 1993 by Richard Bott II IS GRANTED; and that the Petition for Leave to File Petition for Reconsideration and the Petition for Reconsideration, both filed June 25, 1993 by Richard Bott II, and the related pleadings ARE DISMISSED.

3. IT IS FURTHER ORDERED, That Paragraph 18 of the Hearing Designation Order, 8 FCC Rcd at 4077, IS MODIFIED to read in part:

> . . . (iii) a finding adverse to Bott is made and affirmed by a final ruling of the Commission with respect to issue (b) . . .

[1] On July 8, 1993 the Mass Media Bureau filed an Opposition to the Petition for Leave to File a Petition for Reconsideration. On July 20, 1993, Bott filed a Reply and on July 23, 1993 the Bureau moved to dismiss Bott's Reply.

[2] In connection with our consideration of this matter, we will modify paragraph 18 of the Hearing Designation Order to make clear that an adverse finding regarding Bott's qualifications would lead to issuance of an order to show cause concerning revocation of Bott's interest in KCVI(FM) only upon adoption of a final ruling by the Commission affirming such a finding.

Before the
Federal Communications Commission
Washington, D.C. 20554

INTERNATIONAL TELECHARGE, INC.,
Complainant,

v. File No. E-88-81

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 1993; Released: October 8, 1993

By the Chief, Common Carrier Bureau.

I. INTRODUCTION

1. International Telecharge, Inc. (ITI) filed a formal complaint against American Telephone and Telegraph Company (AT&T), alleging that implementation of AT&T's revised Hospitality Network Service (HNS) plan would violate Sections 201(b), 202(a), 203, and 314 of the Communications Act, 47 U.S.C. §§ 201(b), 202(a), 203, 314,[1] and would otherwise not be in the public interest. ITI asserts that HNS is an untariffed service, and asks the Commission to find unlawful various actions AT&T might take pursuant to the plan and to order AT&T to cease and desist from engaging in any such arrangements until such findings are made.[2] AT&T denies ITI's substantive allegations, claiming they are predicated on factual misstatements and that in all events, no violations of the Communication Act have been established.[3] For the reasons discussed below, we deny ITI's complaint.

II. BACKGROUND

2. AT&T proposed its original HNS under Transmittal No. 1046 in October 1987. Aimed at high volume traffic aggregators, the proposed tariff represented a two-stage reduction of message telephone service (MTS) rates for qualifying HNS subscribers. First, in order to receive discounted 1+[4] service for resale, a subscriber was required to commit to deliver four million minutes of both 0+[5] and 1+ traffic to AT&T. Second, the subscriber would receive a payment, or commission, for each 0+ call delivered to AT&T. However, to be eligible for the 0+ payments or commissions, a subscriber would have to be presubscribed to AT&T's 1+ service.[6]

3. On January 22, 1988, the Common Carrier Bureau (Bureau) concluded that AT&T's proposed HNS tariff revisions constituted a bundled offering that warranted suspension and investigation.[7] On March 2, 1988, the Bureau initiated its investigation by directing AT&T to show why the "tie-in" of 0+ and 1+ services in its HNS proposal did not constitute an unreasonable practice under Section 201(b) of the Act.[8] AT&T was further directed to respond to specific questions relating to rebates and the requirements of Section 203(c).[9]

4. After AT&T's direct case and opposing petitions by various parties were filed, AT&T withdrew its original HNS proposal on April 22, 1988.[10] AT&T subsequently filed Transmittal No. 1197 proposing tariff revisions to implement a revised version of HNS. The significant difference in this latter proposal was that all previous references to

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[1] Section 201(b) requires "[a]ll charges, practices, classifications, and regulations for and in connection with each communication service, [to] be just and reasonable." 47 U.S.C. § 201(b).

Section 202(a) prohibits common carriers from making unjust or unreasonable discrimination in the charges, practices, or classifications in the provision of like communications services. This section also prohibits giving any undue or unreasonable preference to any particular person, class of persons, or locality. 47 U.S.C. § 202(a).

Section 203(a) of the Act requires carriers to file with the Commission tariffs showing the charges for the carrier's services, and the classifications, practices, and regulations affecting such charges. Section 203(b), *inter alia*, prohibits changes to these tariffs without adequate notice to the Commission and the public. Section 203(c) prohibits rebates by common carriers by, *inter alia*, not permitting them to "refund or remit by any means or device any portion of the charges so specified," or to "extend to any person any privileges or facilities, in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule." 47 U.S.C. § 203(a), (b), (c).

Section 314 prohibits common carriers from engaging in telecommunications for the purpose of substantially lessening competition or restraining commerce. 47 U.S.C. § 314.

[2] ITI originally filed a Motion for an Order to Cease and Desist Pending Declaratory Ruling and a Petition for Declaratory Ruling. The Bureau notified the parties that the pleadings raised issues which would be more appropriately handled in the context of a formal complaint proceeding pursuant to Section 208 of the Communications Act, 47 U.S.C. § 208, and directed AT&T to answer the complaint. AT&T, however, filed a Motion for a More Definite Complaint instead. After considering the pleadings relevant to the motion, the Common Carrier Bureau denied AT&T's motion and ordered it to answer the complaint. *International Telecharge, Inc. v. AT&T*, DA 88-1476 (Com. Car. Bur. released Sept. 22, 1988).

[3] Answer at (i). AT&T states that many of ITI's statements refer to AT&T's original HNS filing that was subsequently withdrawn by AT&T, and Common Carrier Bureau orders regarding that filing. Answer at 6 n.*.

[4] "1+" calls are sent-paid calls billed to the telephone from which they are placed.

[5] "0+" calls or non-sent-paid calls include collect calls, calls billed to a third number, and calls billed to telephone calling cards.

[6] *Revision to AT&T Communications Tariff F.C.C. No. 1*, Hospitality Network Service, Transmittal No. 1046, 3 FCC Rcd 975, 976 (Com. Car. Bur. 1988) (*HNS Suspension Order*).

[7] *Id.*

[8] *Revision to AT&T Communications Tariff F.C.C. No. 1*, Hospitality Network Service, Transmittal No. 1046, 3 FCC Rcd 1465 (Com. Car. Bur. 1988) (*HNS Investigation Order*).

[9] *Id.* at 1465-66.

[10] Accordingly, the Bureau concluded that its investigation was moot and terminated the proceeding. *Revision to AT&T Communications Tariff F.C.C. No. 1*, Hospitality Network Service, Transmittal No. 1046, 3 FCC Rcd 3961 (Com. Car. Bur. 1988) (*HNS Termination Order*).

0+ traffic were deleted. AT&T no longer required aggregators to presubscribe to its 1+ service in order to qualify for 0+ commissions, nor did it propose, under its revised HNS, to pay aggregators commissions for 0+ traffic. The revised tariff proposal discounts AT&T's 1+ rates if the customer provides to AT&T at least four million minutes of 1+ traffic per month, over half of which must be off-peak.[11] After reviewing AT&T's tariff proposal and the various pleadings submitted in opposition, the Bureau concluded that no compelling arguments had been presented that the revised HNS tariff proposal was so patently unlawful as to warrant either rejection or investigation.[12] ITI filed the instant complaint challenging the lawfulness of AT&T's revised HNS offerings on July 5, 1988.

III. DISCUSSION

A. AT&T's HNS Plan and Alleged Tie-in Arrangements

Contentions of the Parties

5. ITI claims that despite AT&T's deletion of references to 0+ traffic in the revised plan, AT&T's payment of 0+ commissions under the plan remains contingent on the aggregator hotel/motel selecting AT&T's 1+ service. ITI argues that such a tie-in arrangement violates Sections 201(b), 202(a), and 314 of the Act. First, ITI claims that AT&T's attempt to exploit its dominance in the telecommunications field by coercing customers into taking a service that they may not want is an unreasonable practice in violation of Section 201(b). Second, ITI asserts that conditioning 0+ commissions on subscribing to HNS discriminated against those 0+ participants that do not use HNS and violates Section 202(a). Third, ITI contends that by tying 0+ service to 1+ service, AT&T is attempting to close off the 1+ market to other potential carriers, which would violate Section 314. Lastly, ITI argues that AT&T's alleged tie-in arrangements are prohibited by Section 3 of the Clayton Act, 15 U.S.C. § 14, and Section 1 of the Sherman Act, 15 U.S.C. § 1, as unlawful restraints of trade.

6. ITI attaches to its complaint as documentary evidence a copy of AT&T's Master Guest Telephone Commission Agreement to support its argument. ITI also cites a letter from the Marriott Corporation, attached to a separate complaint against AT&T by Telesphere International.[13] Finally, ITI cites the *Private Payphone*[14] order for the proposition that even though 1+ and 0+ are distinct services, AT&T's attempt to tie them is illegal.[15]

7. In reply, AT&T states that ITI's allegations have no merit because its payment of 0+ commissions is not tied or linked to an aggregator's purchase of any AT&T 1+ service, including HNS, or any other AT&T service. AT&T further states that the commissions in no way affect or alter AT&T's tariffed rates for 0+ service. AT&T maintains that in all cases, the end user pays the full tariffed rate for the AT&T services used.[16]

Discussion

8. The Commission has clear authority to enforce Section 3 of the Clayton Act, 15 U.S.C. § 14, and has previously held that the underlying policy goals of the antitrust laws are useful in analyzing what constitutes an unreasonable practice under Section 201(b) of the Act.[17] However, the threshold question in determining the lawfulness of tying one service to another is whether there is a tie between the two services. ITI has failed to show that AT&T bundles the two services under its HNS plan. The Holiday Commission Agreement,[18] on which ITI relies to support its claim, contains no mention of 1+ service, tied or otherwise. Instead, the document appears to be an agreement between AT&T and the Holiday Corporation for the payment of 0+ commissions, and nothing else. The only other documentary evidence cited by ITI, the Marriott letter,[19] contains no indication that AT&T tied the availability of 0+ commissions to Marriott's purchase of AT&T's 1+ service; instead, it simply indicated that Marriott had selected AT&T to provide both services.

9. In the absence of any persuasive evidence that AT&T, under its HNS plan, conditions the availability of 0+ commission payments on the purchase of 1+ services, we find that ITI has failed to demonstrate that AT&T's revised HNS tariff results in an unreasonable practice within the meaning of Section 201(b) of the Act or an unlawful restraint on commerce within the meaning of Section 314 of the Act. In addition, we find that other than its unsupported allegation of an unlawful tie-in of 0+ and 1+ services, ITI has presented no specific evidence or arguments to support its claim that the HNS plan is unreasonably discriminatory under Section 202(a) of the Act. Accordingly, we find no merit to its Section 202(a) claim.

B. Section 203(c)--Alleged Rebates under AT&T's HNS Plan

Contentions of the Parties

10. ITI asserts that AT&T's HNS proposal to pay hotel/motel aggregators 0+ commissions results in a form of disguised rebates for 0+ service, a practice which violates the prohibition against unlawful rebates under Section 203(c)(2).[20] ITI argues that under *United States v. Braverman*,[21] concern over who receives these rebates is irrelevant. According to ITI, it is the existence of the rebates themselves that violates Section 203(c). Therefore, ITI claims, AT&T's commission payments, no matter to whom paid, are unlawful.[22]

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[11] *Revision to AT&T Communications Tariff F.C.C. No. 1*, Hospitality Network Service, Transmittal No. 1197, 3 FCC Rcd 4169 (Com. Car. Bur. 1988) (*Revised HNS Order*).
[12] *Id.*
[13] *See Telesphere Int'l v. AT&T*, 8 FCC Rcd 4945 (Com. Car. Bur. 1993).
[14] *AT&T's Private Payphone Commission Plan*, 3 FCC Rcd 5834 (Com. Car. Bur. 1988) (*Private Payphone*), *reconsidered*, 7 FCC Rcd 7135 (1992) (*Private Payphone Reconsideration*).
[15] Complaint at 5-9, exhibits 1, 2; Reply at 2 n.3, 3.
[16] Answer at (i), 7.
[17] *See Private Payphone*, 3 FCC Rcd at 5837 (citing 47 U.S.C. § 602).
[18] Complaint, Exhibit 1.
[19] Complaint, Exhibit 2.
[20] Complaint at 12.
[21] 373 U.S. 405 (1963).
[22] Complaint at 10-11; Reply at 4.

11. In response, AT&T first states that its HNS plan is a fully tariffed service that involves no commission payments by AT&T to any aggregator or end user in connection with 0+ service. Therefore, argues AT&T, its HNS plan involves no rebates.[23] Second, AT&T argues that, to the extent that it does pay 0+ commissions independently of any HNS agreements, the commissions are paid to the aggregator, not the end user of its 0+ service. AT&T asserts that the claim that rebates may be made to entities other than end users is incorrect, and that *Braverman* supports the proposition that payments by carriers are not rebates if they are made to compensate for the receipt of performance of acts undertaken on the carrier's behalf, which AT&T claims is the case here. AT&T points out that under its 0+ commission plan, it pays hotels, motels, and other traffic aggregators commissions in return for the aggregator installing and maintaining space for the telephones, identifying AT&T as the primary carrier, and delivering undesignated 0+ traffic to AT&T. Thus, AT&T asserts, the commissions are simply ordinary business expenses, not rebates.[24]

Discussion

12. Initially, we note that the Bureau has previously held that "commission payments to traffic aggregators for the delivery of '0+' traffic, a standard practice in the operator services industry, are a legitimate business expense" paid to the aggregator in return for the ability or right to receive 0+ traffic.[25] That traffic, unless otherwise specified by the customer end user, is delivered by the aggregator to the service provider pursuant to a presubscription agreement. We also note that the Commission has affirmed the Bureau's finding in *Private Payphone* that, while the traffic aggregator is the subscriber for '0+' service for its premises, it is not the customer for the purposes of a rebate analysis."[26] The customer for 0+ service is the caller or the billed party ultimately responsible for the relevant charges.[27]

13. It is apparent, after carefully reviewing the record in this proceeding, that no commissions are paid by AT&T under the HNS plan. HNS is directed at hotel/motel aggregators that experience high volumes of MTS traffic during the evening and night periods. The tariff sets a fixed rate of eighteen cents per minute for all 1+ calls, conditioned on at least four million minutes per month, less than half of which must occur during the day rate period. It involves no payments by AT&T to any aggregator or end user.

14. Therefore, we are not persuaded by ITI's claim that AT&T's HNS plan provides for unlawful rebates. In addition, we have previously held that AT&T is not required to tariff its 0+ commission payments.[28] The record in this proceeding amply supports AT&T's contention that each 0+ customer pays the full tariffed rate for its 0+ services, regardless of commissions, and that there is no relationship or connection between AT&T's 0+ commission payments and AT&T's tariffed charges. Thus we find no merit to ITI's claims regarding rebates.

C. Section 203(a), (b)(1), and (c)(3)--Requirement to File Tariffs

Contentions of the Parties

15. ITI charges that AT&T has failed to tariff its HNS plan in violation of Section 203(a). ITI further contends that AT&T's HNS plan constitutes an impermissible change to AT&T's already tariffed 0+ rates, in violation of Section 203(b)(1). Finally, ITI claims that AT&T's practice of providing 0+ commissions to high volume customers is the type of preferential treatment proscribed by Section 203(c)(3).[29]

16. AT&T reiterates that its HNS plan is tariffed with the Commission, and that its 0+ commission plan is unrelated to its HNS plan. AT&T argues that ITI's claims are baseless because its commission payments cannot affect AT&T's 0+ tariffed rates in any way because the commissions are not paid to the end user of the 0+ service.[30]

Discussion

17. AT&T's HNS plan to provide discounted 1+ service to aggregators for the purpose of resale was properly tariffed,[31] and thus does not violate Section 203(a). Further, ITI has failed to demonstrate how AT&T's tariffed HNS service, which provides only 1+ service, changes AT&T's 0+ rates in violation of Section 203(b)(1). The record clearly shows, and ITI has presented no evidence to the contrary, that AT&T's 1+ and 0+ services are separately tariffed and offered independently of one another. Finally, Section 203(c)(3)'s proscription against extending priviledges not specified in the relevant tariff does not apply to AT&T's 0+ commission arrangements because they are not tariffed communications services. Accordingly, there is no basis for the remainder of ITI's Section 203 claims.

D. Section 202(a)--Unlawful Discrimination

Contentions of the Parties

18. ITI claims that AT&T unlawfully discriminates by paying commissions to aggregators who participate in its 0+ commission plan while not paying commissions to those who do not. According to ITI, AT&T's HNS plan gives discriminatory preference to some hotels, and not to others, even though the same service is being provided. ITI acknowledges that AT&T "offers the same services to those opting for any of the arrangements under its HNS plan [as] it does to those who do not."[32] The discrimination, according to ITI, lies in the fact that some aggregators receive 0+ commissions while others do not. ITI also asserts that since

[23] Answer at 6.
[24] *Id.* at 7-9.
[25] *National Telephone Services, Inc.*, 8 FCC Rcd 654, 655-56, (Com. Car. Bur. 1993) (petition for review pending) (*NTS*); *See also Private Payphone*, 3 FCC Rcd at 5836.
[26] *See NTS*, 8 FCC Rcd at 655 (citing *Private Payphone Reconsideration*, 7 FCC Rcd at 7135-36).
[27] *Id.*
[28] *Nat'l Tel. Services, Inc.*, 8 FCC Rcd 654 (Com. Car. Bur. 1993), *application for review pending* (filed Mar. 3, 1993).
[29] Complaint at 11, 13.
[30] Answer at 7-9, 11.
[31] *See Revised HNS Order, supra.*
[32] Complaint at 16.

the user has no input into the aggregator's decision of which carrier will provide its 0+ service to the aggregator. AT&T's plan discriminates against users. ITI asserts that these practices are discriminatory and unreasonably preferential, in violation of Section 202(a).[33]

19. AT&T responds that Section 202(a) applies only to a carrier's rates and charges to end users for communications services. AT&T argues that since AT&T's 0+ commissions are not paid to end users and do not affect the tariffed rates end users pay, Section 202(a) is inapplicable.[34]

Discussion

20. As we indicated above, AT&T's HNS plan is independent of AT&T's 0+ service and its 0+ commission plan.[35] ITI's contention that AT&T violates the nondiscrimination requirements of the Act by paying 0+ commissions fails because 0+ commission payments are considered a business expense, not a communications service, and consequently are not governed by the nondiscriminatory provisions of Section 202(a).[36]

21. ITI's charge that AT&T's HNS plan discriminates against end users is equally without merit. Although a hotel/aggregator may presubscribe to a particular carrier for its network service, users themselves make the ultimate decision of which carrier will carry their traffic.[37] ITI confuses the issue by using the terms "aggregators" and "users" interchangeably. ITI's claim that AT&T discriminates against "users" of 0+ services by paying commissions to "aggregators" to route undesignated 0+ traffic to AT&T does not state a claim of discrimination within the meaning of Section 202(a).

E. Section 314--AT&T's HNS Plan and the Public Interest

Contentions of the Parties

22. ITI claims that AT&T's HNS plan violates Section 314 because it would unduly restrict or lessen competition. ITI asserts that the plan requires participating motels and hotels to route all their traffic through AT&T, something ITI contends can only be accomplished by blocking a caller's access to AT&T's competitors. ITI argues that this would shut out smaller carriers from the traffic aggregator 0+ commission-based market.[38]

23. AT&T denies that its HNS plan is anticompetitive, and observes that ITI has failed to provide any evidentiary support for its allegations. AT&T notes that the presence of more than 40 entities offering operator services attests to the fact that competition exists in the operator service market, and that competition is not being impaired by its HNS plan in any respect.[39]

Discussion

24. We find no support in the record for ITI's claim that AT&T's HNS plan is contrary to Section 314 of the Act. ITI's unsupported assertion that AT&T's HNS plan would shut out smaller carriers from the traffic aggregator 0+ commission-based market is unavailing in any event. As noted above, the HNS plan, as tariffed by AT&T, has nothing to do with 0+ service or 0+ commissions. In addition, the Telephone Operator Consumer Services Improvement Act of 1990 prohibits blocking access to carriers by aggregators.[40] Therefore, we find ITI's contentions lacking evidentiary support.

IV. CONCLUSION AND ORDERING CLAUSE

25. Based on the record before us, we find that ITI has failed to meet its burden of proving that AT&T's HNS plan violates Sections 201(b), 202(a), or 203(c) of the Communications Act. Therefore, we deny ITI's complaint.[41]

26. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 208 of the Communications Act, 47 U.S.C. §§ 154(i), 208, and the authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that ITI's complaint IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

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[33] *Id.*
[34] Answer at 11.
[35] *See supra* at para. 4.
[36] *See Private Payphone*, 3 FCC Rcd at 5836; *Private Payphone Reconsideration*, 7 FCC Rcd at 7135-36; *NTS*, 8 FCC Rcd at 655-56.
[37] *Id.*
[38] Complaint at 17-18.
[39] Answer at 11.
[40] 47 U.S.C. § 226(c)(1).
[41] In its complaint, ITI requests the Commission to order AT&T to cease and desist from entering into any arrangements as are contemplated under its proposed HNS plan. In light of our action herein, such a request is denied.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 86-285

In the Matter of

Fees for Applications Related
to Common Carrier Point to Point
Microwave Radio Service.

ORDER CLARIFYING RULES

Adopted: September 24, 1993; Released: October 12, 1993

By the Commission:

1. This *Order* corrects an erroneous statement in our rule making implementing Congress' 1989 revision of its Schedule of Charges for fees charged by the Commission for applications and other filings. *See* Omnibus Budget Reconciliation Act of 1989 (1989 Budget Act), Pub. L. 101-239, 101 Stat. 2106, codified at 47 U.S.C. § 158; *see also Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Act of 1989*, 5 FCC Rcd 3558 (1990), *Recon. in Part*, 6 FCC Rcd 5919. Therein, we incorrectly stated that no fee is due with an application for modification of a license in the Common Carrier Point-to-Point Microwave Service unless the modification involves a new frequency. *See* 6 FCC Rcd at 5926. In fact, Congress' revised Schedule of Charges and the Commission's implementing rules removed this limitation with the result that a fee is due with any application for a major modification of a PPMRS license regardless of whether the modification involves a new frequency. *See* 47 U.S.C. § 158(g), Schedule of Charges for Common Carrier Services at 6(b); *see also* 47 C.F.R. § 1.1105(6)(b).

2. Accordingly, IT IS ORDERED THAT, the foregoing clarification IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Robert A. Berry
SMR Station WNXI221

Charles R. Gross
SMR Station WNXI222

Moreno Communications
SMR Station WNXI224

Alfonse Iudicello
SMR Station WNXI225

ORDER

Adopted: September 28, 1993; Released: October 12, 1993

By the Deputy Chief, Licensing Division:

1. On June 1, 1993 Robert A. Berry, Charles R. Gross, Moreno Communications, and Alfonse Iudicello filed petitions for reconsideration seeking reinstatement of SMR station licenses WNXI221, WNXI222, WNXI224, and WNXI225 respectively. The licenses were cancelled on May 17, 1993 due to the SMR operators' failure to substantiate construction of their SMR systems in accordance with Commission rules. For the reasons that follow, the petitions for reconsideration are denied.

2. Each of the four licensees has presented evidence that American Mobile Systems, Inc. ("AMS"), under a management contract, constructed each station temporarily in Goulds, Florida to meet construction and placed-in-operation deadlines of October 2, 1992. 47 CFR §90.631. Licensees claimed that permanent construction of the stations at their licensed parameters was impeded because Hurricane Andrew destroyed the 698 foot tower on which the SMR operators intended to construct. A few days before the construction deadline, the SMR operators requested a six month extension of time in which to meet the Commission's requirement that they permanently construct and place their systems in operation. Licensees claim that AMS hastily constructed the systems on October 2, 1992, and that the extension was not granted until October 26, 1992.

3. By letters dated July 8, 1993, we requested additional information relating to the construction and operation of these systems. The SMR operators filed a response on August 12, 1993. The response demonstrates that the stations were constructed on October 2, 1992 with an antenna at the sixty foot level. The antenna and equipment were removed from that location to another building at the same site approximately two weeks later. No information was provided regarding the second location with respect to the antenna height or operation of the system. Our own investigation has revealed that the system was not operating and that this latter location was even without power.

4. While the evidence demonstrates temporary construction of this system, that is not sufficient to meet the requirements of our rules. The Commission has directed that construction must be in substantial accordance with the parameters of the station authorization including antenna height. *Report and Order*, 6 FCC Rcd 7297, 7299 (1991)(Paragraph 9); *First Report and Order and Further Notice of Proposed Rule Making*, 8 FCC Rcd 1469, 1482 (Released February 13, 1993) (Paragraph 55). The licenses at issue provide for a 698 foot antenna height. No modification application has been filed. According to the evidence submitted, the licensees constructed an antenna at the 60 foot level on a 300 foot replacement tower. When the site manager, Lodestar, Inc., requested that AMS sign a lease agreement to remain permanently on the tower, AMS chose to move the equipment to another building without power. This occurred approximately two weeks after the temporary construction was completed.

5. The Commission has repeatedly stated that this temporary type of construction does not meet the requirements of our rules. *Notice of Proposed Rule Making*, 4 FCC Rcd 8673, 8678 (1989)(Paragraph 40); *First Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 1469, 1482 (1993)(Paragraphs 53-55). As of April 2, 1993, the extended construction deadline for Stations WNXI221, WNXI222, WNXI224, and WNXI225, these stations were never constructed in substantial accordance with their licensed parameters, nor were they ever permanently constructed. The licensees did not file for modification of their licenses.

6. While we are aware that Hurricane Andrew impeded the construction of these stations at their full height, having given these licensees an additional six months to meet the construction requirement, we find that these licensees have demonstrated a disregard of the Commission's requirements. These licensees might have sought other special consideration from the Commission in light of the adversity caused by Hurricane Andrew, such as a waiver allowing construction at the 300 foot level to satisfy the construction requirement until such a time as the 698 foot tower is rebuilt. Instead, the licensees chose to attempt to satisfy the construction requirement with "SMR on wheels" type of construction. The Commission has repeatedly stated that this does not satisfy the construction requirement.

7. The licensees also attempted to mislead the Commission by stating that they constructed on the 300 foot replacement tower. Until the Commission requested that they provide the height at which they constructed their antenna, the licensees did not reveal that they only constructed a temporary antenna at the 60 foot level. Additionally, the four licensees stated that their stations were constructed on October 2, 1992 and deconstructed on March 15, 1993 without revealing that the stations ceased operation and were stored in a building without power after only two weeks of temporary construction.

ORDERING CLAUSE

8. For the above reasons, the petitions for reconsideration filed by Messrs. Berry, Gross, Moreno and Iudicello ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

W. Riley Hollingsworth
Deputy Chief, Licensing Division

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Laurie D. Perkins NAL/Acct.: 215FE0170
Kent, Washington

ORDER

Adopted: September 16, 1993; Released: October 12, 1993

By the Field Operations Bureau:

1. This is a response to a Petition for Reconsideration dated September 5, 1992, submitted to the Federal Communications Commission (FCC) under Section 1.106 of the FCC rules. 47 C.F.R. Section 1.106. The petition objected to a $400 monetary forfeiture that was issued by the Ferndale field office to Laurie D. Perkins. As explained below, we are reducing the forfeiture penalty to $100.

2. Our records show that on July 18, 1992, an FCC employee intercepted transmissions on Marine Channel 16 (156.800 MHz) from a vessel identified as "NEVER ENOUGH, WSX7062." Mrs. Perkins, owner of the vessel, did not have an authorization issued by the Commission for this operation. The expired license and call sign of a vessel previously owned by Mrs. Perkins were being used.

3. On August 3, 1992, the Ferndale office issued a Notice of Apparent Liability (NAL) for violation of Section 301 of the Communications Act by operating an unlicensed radio station on Marine Channel 16. A response to the Notice of Apparent Liability was received on August 5, 1992. Upon review of the response, the Ferndale office issued a Notice of Forfeiture for $400 on August 19, 1992.

4. Mrs. Perkins stated that she was not aware that she could not use the license from the previous vessel. She also stated she did not know that the license had expired, and that she had never received a renewal form from the FCC. She feels this $400 fine is unfair.

5. Laurie Perkins has not presented evidence sufficient to warrant cancelling the NAL. The Commission has, however, reconsidered the usual amount of forfeiture for this violation. We are, therefore, reducing it to $100.

6. Accordingly, IT IS ORDERED, pursuant to Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, and the 1993 *Policy Statement Standards for Assessing Forfeitures*, FCC 93-382 (released August 12, 1993), that Laurie Perkins submit the $100 monetary forfeiture payment within 30 days of the receipt of this order. Payment may be by check or money order payable to the Federal Communications Commission. The NAL number 215FE0170 should be placed on the remittance and it should be sent to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
October 4, 1993

Released: October 12, 1993

Ronny E. Cox
P.O. Box 747
Clatskanie, OR 97016

In reply, refer to:
215FE0217

Dear Mr. Cox:

This is in response to your undated letter postmarked November 21, 1992, in response to our forfeiture order dated October 26, 1992, bearing the account number 215FE0217.

We have carefully reviewed the case and your letter. We find no information in your letter not previously considered when the forfeiture was imposed. The amount of the forfeiture was not raised after your communication with our Ferndale office. The initial notice of apparent liability sent to you was for $500. The subsequent notice of forfeiture was also for $500. The initial notice of apparent liability sent to your father was for $200 rather than $500 because his violation was considered to be failure to renew an expired license rather than failure to apply for a new license. An oversight in neglecting to apply for renewal of an existing license is considered to be less serious violation than neglecting to apply for a new license by a new owner of a vessel.

Your letter indicates an additional misunderstanding of our rules that needs to be clarified. Section 80.405(c) of the Rules states in part: "... The current station authorization or a clearly legible photocopy must be posted at the control point of each station...." The license bearing the call sign WTX4626 expired more than a year ago and had been issued to your father rather than yourself. We note that your boat radio has been relicensed under the current call sign WBO2442. If you have not done so, you should post either the license or a photocopy of it at the operating position of your radio as indicated by the above rule.

The fact that your boat radio is now properly licensed does not justify cancellation or mitigation of a past forfeiture for unlicensed operation. If a person applies for renewal of an existing expiring station license *before* it has expired, he may continue to use the radio until the Commission completes action on the application. A person applying for a new station license may legally operate the radio as soon as the completed application (with fee) is sent to the Commission and the temporary station authorization posted at the radio's operating position. Neither situation applies to your use of the radio on the date of the intercepted communications. Therefore, the forfeiture is applicable and will not be cancelled.

However, the Commission has recently reviewed and revised its standards for issuance of forfeitures of this type. *See 1993 Policy Statement, Standards for Assessing Forfeitures,* FCC 93-382 (released: August 12, 1993). Based on the fact that there is no record of prior violations on your part, we are reducing the forfeiture amount to $100. You are ordered to pay $100. The forfeiture should be paid by check or money order sent to:

Federal Communications Commission
P.O. Box 73482
Chicago, IL 60673-7482

To ensure proper credit, please place the number NAL/Acct. No. 215FE0217 on the remittance.

Sincerely,

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

David Plourde NAL/Acct. No. 215HF0047
3 Orange Street
Lewiston, Maine 04240

NOTICE OF FORFEITURE

Adopted: October 4, 1993; Released: October 12, 1993

By the Field Operations Bureau:

I. INTRODUCTION

1. This is a Notice of Forfeiture (NOF) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b) (the Act), to David Plourde for willful violation of Section 301 of the Communications Act, 47 U.S.C. § 301, and Section 95.409(a) of the Commission's Rules for operating a CB Radio Station using a non-type accepted transmitter and a linear amplifier.

2. The appropriate amount of forfeiture for this violation is $10,000.

II. BACKGROUND AND DISCUSSION

3. On April 24, 1992, the Field Operations Bureau, Enforcement Division issued a Notice of Apparent Liability (NAL) to David Plourde, in the amount of $10,000. David Plourde was afforded 30 days to respond to the NAL with circumstances mitigating or cancelling the forfeiture. To date, David Plourde has not responded to the Commission.

III. ORDERING CLAUSES

4. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act 47 U.S.C. § 503 and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that David Plourde, SHALL FORFEIT A MONETARY FORFEITURE in the amount of $10,000 for violating Section 301 of the Communications Act and Section 95.409(a) of the Commission's Rules.

5. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. § 1.80(f)(3), that David Plourde shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture. Payment should be made by check or money order payable to the Federal Communications Commission, attention NAL Acct. No. 215HF0047 mailed to the following address.

Federal Communications Commission
Field Operations Bureau
Enforcement Division
Legal Branch/Stop Code 1500E/LF
1919 M Street, N.W.
Washington, DC 20554

6. IT IS FURTHER ORDERED that this Forfeiture Order shall be sent by certified mail, return receipt requested, to David Plourde, 3 Orange Street, Lewiston, Maine 04240.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Request for waiver of the requirements in Section 80.1061(a) of the Rules to permit type acceptance of a 406.025 MHz emergency position-indicating radio beacon.

ORDER

Adopted: October 4, 1993; Released: October 12, 1993

By the Chief, Private Radio Bureau:

1. Graseby Nova, Ltd. (Graseby), a manufacturer of emergency position-indicating radio beacons operating on 406.025 MHz (406 MHz EPIRBs), requests a waiver of Section 80.1061(a) of the Rules, 47 C.F.R. § 80.1061(a), to permit type acceptance of a 406 MHz EPIRB which does not comply with current technical requirements for type acceptance. This action grants the requested waiver.

2. Section 80.1061(a) of the Rules requires that 406 MHz EPIRBs "must meet all the technical and performance standards contained in the Radio Technical Commission for Maritime Services document titled 'RTCM Recommended Standards for 406 MHz Satellite... EPIRBs' (RTCM Standard)...."[1] Graseby requests a waiver of the requirement that 406 MHz EPIRBs have OFF/ON switches and the requirement for certain language on a label. Such a waiver would allow Graseby to submit its 406 MHz EPIRB for type acceptance for use in the United States. The United States Coast Guard (Coast Guard), the organization primarily responsible for maritime safety in the United States, supports Graseby's request.

3. Presently, the RTCM Standard requires every 406 MHz EPIRB to have a switch with two modes: OFF, the transmitter is deactivated; and ON, the transmitter is activated. Graseby's Model RT-260M 406 MHz EPIRB, however, is activated by a two position switch whose settings are "ON" and "AUTO." In the ON mode, the transmitter is activated; in the AUTO mode, the transmitter will be automatically activated if the 406 MHz EPIRB is released from its mounting and exposed to sea water. According to Graseby, this design responds to several past incidents where 406 MHz EPIRBs have been automatically released from their mountings in emergencies, but have not transmitted because the switch was in the OFF position.[2]

4. Further, the design modification in the Graseby 406 MHz EPIRB appears to improve the operational characteristics of the device, and thus improves emergency communications. This modification complies with the latest draft of RTCM's update to the technical standards for 406 MHz EPIRBs,[3] anticipating the standards which likely will apply to 406 MHz EPIRBs in the future. The Coast Guard's support of the waiver adds considerable weight to Graseby's request.

5. The current technical standards for 406 MHz EPIRBs also require the casing labels to bear, *inter alia*, the caption "THIS TRANSMITTER IS AUTHORIZED FOR USE ONLY DURING SITUATIONS OF GRAVE AND IMMINENT DANGER."[4] Graseby also asks for a waiver to replace this caption with a caption reading "NOT TO BE OPERATED EXCEPT IN AN EMERGENCY. IMPROPER USE CARRIES A SEVERE PENALTY."[5] In support of this request Graseby points out that RTCM's latest review draft of technical standards provides for use of an equivalent warning.[6]

6. We find Graseby's alternative caption acceptable. It is at least as clear and authoritative as the RTCM caption, and the addition of the penalty clause may enhance the prohibitive effect of the caption. Again the request is consistent with the latest draft of the RTCM standards and supported by the Coast Guard.

7. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 0.331 and 1.3 of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.3, that Section 80.1061(a) of the Commission's Rules, 47 C.F.R. § 80.1061(a), IS WAIVED to the extent that Graseby Nova, Ltd. may submit for type acceptance EPIRBs with the departures from the RTCM Standard for 406 MHz EPIRBs concerning OFF/ON switches and labelling requirements described above. In all other particulars, EPIRBs submitted for type acceptance by Graseby Nova, Ltd. must conform to the standards of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

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[1] Radio Technical Commission for Maritime Services (RTCM), *RTCM Paper 215-87/SC 110-89, RTCM Recommended Standards for 406 MHz Satellite Emergency Position-Indicating Radiobeacons (EPIRBs)* ¶ 2.3.1.2. (1987) (hereafter RTCM Standard).

[2] Fax to George Dillon, FCC, from Peter Stanier, Graseby Nova, Ltd. (Graseby) at 1 (April 16, 1993).

[3] The draft of the updated RTCM standard requires "AUTO" and "ON" settings like the settings in Graseby's 406 MHz EPIRB. RTCM, *RTCM Paper 75-93/SC110-237: Recommended Standards for 406 MHz Satellite EPIRBs* ¶ 2.3.1.2. (June 1993) (hereafter RTCM Paper 75-93).

[4] RTCM Standard ¶ 2.4.3.2.4. (1987).

[5] Fax to George Dillon, FCC, from Peter Stanier, Graseby, at 2 (April 16, 1993).

[6] *RTCM Paper 75-93* ¶ 2.4.3.2.2. (June 1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-10

In the Matter of:

800 Presubscription Rules for
800 Providers and
Responsible Organizations

ORDER

Adopted: October 1, 1993; Released: October 13, 1993

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On February 17, 1993, Allnet Communication Service Company (Allnet) filed an Emergency Petition for Declaratory Ruling or, in the Alternative, Rulemaking, requesting that the Commission adopt rules governing the conduct of 800 Responsible Organizations (RESPORGs) and 800 providers.[1] Allnet requests that the Commission rule that an 800 end user who purchases service from a reseller may implement 800 RESPORG and carrier routing changes in the Service Management System (SMS)[2] for its own 800 service.[3]

2. In a related petition filed May 5, 1993, Enterprise Telecom Services (ETS) requests that the Commission issue a declaratory ruling that all AT&T Tariff 12 customers,[4] including resellers, have the same right as other customers to deal with AT&T in its RESPORG capacity, and to control the use of each 800 number assigned to them as customers.[5] Alternatively, ETS asks the Commission to rule that the reassignment of any 800 service number from an AT&T Tariff 12 customer to any other customer of AT&T, or to AT&T itself, will allow the original customer to avoid its Tariff 12 dollar commitment obligations to AT&T.[6]

3. We now grant Allnet's petition in part and clarify that customers of resellers should generally be able to keep their 800 numbers when they change carriers, just as customers of other 800 providers can. We deny ETS's petition.

II. BACKGROUND

4. 800 service is an interexchange service in which subscribers agree in advance to pay for all calls made to them using a predesignated 800 number. LECs provide originating access to IXCs for 800 calls through a "data base" system of access.[7] Under this system, when a caller dials an 800 number, the originating call is recognized and intercepted by a switch, which launches a query through the signaling network (SS7) to a LEC 800 data base. The 800 data base identifies the IXC to which the call should be directed and then returns that information to the switch to route the call. 800 data base access gives users the ability to switch 800 carriers without changing their 800 number.

5. 800 service information is downloaded into each LEC's 800 data bases by the SMS. The SMS is a centralized data base into which all 800 records are loaded. It is currently administered by the 800 Number Administration and Service Center (NASC), which Bellcore has operated since 1989.[8] For each 800 number, only one entity, the RESPORG, has authority to access the SMS in order to input or change service information with respect to that number. SMS access is provided to RESPORGs pursuant to a tariff filed jointly by the BOCs (the SMS tariff).

III. ALLNET PETITION

6. Allnet requests that end users that receive service from a reseller, which, in turn, uses a facilities-based carrier as RESPORG, be considered the customers of RESPORGs for purposes of initiating RESPORG and traffic changes in the

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[1] Allnet did not file its petition in Docket 86-10, stating that the docket dealt only with policies and rules governing the conduct of local exchange carriers (LECs). Allnet Petition at 1 n.1. We believe this is too narrow a characterization of that docket and that the petition properly belongs in Docket 86-10 as the docket most closely associated with 800 number portability issues. To avoid the confusion which would likely arise if we included it in a separate docket, we include this petition in Docket 86-10.

[2] *See infra* para. 5.

[3] In its petition, Allnet also asks the Commission to rule that RESPORG and carrier routing changes must be made within two business days or that the incumbent RESPORG set forth in writing within that time why the change was not made. In addition, it asks the Commission to prescribe a standard form that could be used to make RESPORG and traffic changes. We do not address these requests in this proceeding. The Carrier Liaison Committee's (CLC's) Ad Hoc 800 Data Base Committee has agreed that RESPORG changes should be implemented within two days, and this agreement is now part of the Bell Operating Companies' (BOCs') SMS Tariff. The adequacy of the SMS tariff provision that traffic changes should be made "at the earliest possible date" is being addressed in the context of a SMS Tariff Investigation. *See* In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket 93-129, 8 FCC Rcd 5132 (1993). We also understand that the CLC is currently considering the issue of what information should be included in carriers' forms for RESPORG and traffic changes. As we believe that the industry can best determine whether a standardized form is necessary, and, if so, devise such a form, we reject Allnet's request that we prescribe a form for SMS RESPORG and traffic changes.

[4] *See infra* para. 11.

[5] ETS Petition at 1-6.

[6] ETS Reply at 17.

[7] The data base system of 800 access replaced the so-called NXX method of 800 access on May 1, 1993. Under the NXX method, 800 calls were routed by LECs on the basis of the "NXX" portion of the 800 number dialed (*i.e.*, 800 NXX-XXXX) that were uniquely associated with particular interexchange carriers (IXCs). Under the NXX method, if an 800 service subscriber wanted to change carriers, it had to abandon its 800 number.

[8] In response to concerns about Bellcore's role as NASC administrator, however, the BOCs and Bellcore have agreed to transfer responsibility for the day-to-day operations of the NASC from Bellcore to a neutral third party.

SMS.[9] Allnet seeks to ensure that 800 end users who take services from resellers are not denied the benefits of number portability.

7. Allnet asserts that under existing industry guidelines, an 800 end user taking service from a reseller could be "trapped at the mercy of its resale carrier" if the reseller claims ownership of the 800 number that its customer is using and refuses to allow the customer to take the number elsewhere.[10] It urges the Commission to clarify that the end user, as opposed to the reseller, has rights to the number and may take that number to another carrier, even if the reseller is the customer of an underlying facilities-based carrier that serves as RESPORG. To this end, Allnet proposes that the definition of "customer" in the SMS tariff be modified to read as follows:

> An "800 end using subscriber" for an 800 number is the entity who (1) through contractual or other legal relationship it can be definitively determined that such entity has the exclusive and absolute legal right to designate the physical point(s) of termination for all calls dialed using that 800 number and (2) who receives no compensation of any kind for the transmission, delivery, or management of calls originated using that number. If no entity satisfies both conditions of the prior provision, then the regulated common carrier whose network services as the last exclusive physical point of connection(s) for all calls originated using an 800 number shall be treated by these Guidelines as the 800 end using subscriber for that 800 number.

8. Several parties, including AT&T, MCI, Sprint, CompTel, Wiltel, LCI International, and LDDS, support Allnet's request.[11] They agree that RESPORGs should honor requests by the ultimate end user of an 800 number for a carrier or RESPORG change, even if a reseller, and not that end user, is the RESPORG's customer of record. These parties differ, however, as to whether Allnet's proposed definition of "customer" is appropriate. AT&T claims that it is unnecessarily complicated and that the 800 Data Base Committee Guideline (800 Guideline) definition of "800 service subscriber", as the party that is financially responsible for calls made to its assigned 800 number, if supplemented by an FCC "policy clarification", would suffice.[12]

9. MCI responds that while it does not oppose simplification of Allnet's proposed rule, the 800 Guideline definition advocated by AT&T is inadequate, since the concept of financial responsibility is not a reasonable substitute for Allnet's requirement that the customer have the absolute right to designate the physical points of termination for all calls dialed using the 800 number.[13] MCI argues that there could be many financial arrangements that should not be determinative of the party that should be allowed to keep the 800 number.

10. Long Distance Partnership, Pactel, and BellSouth oppose the requested clarification.[14] Pactel and BellSouth state that they do not want to inject themselves into the relationship between a reseller and its customer. They argue that RESPORGs should not have to make changes on a record for an unknown customer. Long Distance Partnership further argues that a unilateral decision by one customer to switch services without clearance by the reseller would necessarily impair the service of remaining end users.[15] In addition, it argues that any decision to confer rights on the end user should not negate the rights of the reseller to determine its underlying transport provider.

IV. ETS PETITION

11. ETS claims that grant of the relief requested by Allnet would undermine ETS's rights as a Tariff 12 customer of AT&T.[16] Under Tariff 12, AT&T provides each customer with a customized package of integrated telecommunications services at a negotiated price. Generally, customers must commit to certain specified dollar volumes based on their anticipated usage volumes. If a Tariff 12 customer's dollar volumes fall below specified levels, the customer may be subject to additional charges.

12. ETS asserts that Tariff 12 customers who also happen to resell some or all of that service should not be treated differently from any other Tariff 12 customer.[17] It claims that if resellers do not enjoy the same rights as other Tariff 12 customers to 800 numbers, resellers may be unable to maintain the usage volumes required by their agreement with AT&T. In these circumstances, it argues, they should not be penalized if their usage falls below committed levels.

13. AT&T, MCI, Ad Hoc, Allnet, Sprint, and CBCHA/CCTU oppose ETS's petition.[18] They argue that an end user's choice to use a reseller rather than a facilities-based carrier for 800 service should have no bearing on its rights to portability. It would be entirely inconsistent with the objectives of portability, they say, to allow ETS to prevent its customers from switching their numbers to another 800 service provider on the grounds that it "owns" the number -- except in very restricted circumstances (*e.g.*, numbers shared by more than one customer).[19] AT&T, Allnet, and Ad Hoc further claim that Tariff 12 resellers should not be provided with special protection from the risks associated with the loss of 800 customers any more than facilities-based carriers, which also make commitments based on expected traffic volumes.[20]

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[9] Allnet Petition at 10-14.
[10] *Id.* at 12.
[11] AT&T Comments at 6-8, Reply at 3-5; MCI Comments at 4-5; Sprint Comments at 4-6, Reply at 3-5; CompTel Comments at 1-4; WilTel Comments at 2; LDDS Comments at 2-3; LCI International Reply at 1-2.
[12] AT&T Comments at 8.
[13] MCI Reply at 8.
[14] Long Distance Partnership Comments at 3-8, Reply at 2; Pactel Comments at 3-4, Reply at 2-3; BellSouth Comments at 2-4.
[15] Long Distance Partnership Comments at 5.
[16] ETS Petition at 1-5.
[17] *Id.* at 3.
[18] AT&T Comments at 1-5; MCI Comments at 1-2; Sprint Comments at 1-4; Allnet Comments at 1-3; Ad Hoc Reply at 2-3; CBCHA/CCTU Reply at 1-3.
[19] *See* Sprint Comments at 2; *see also* Long Distance Partnership Reply at 2.
[20] Allnet Comments at 2-3; AT&T Comments at 4-5; Ad Hoc Reply at 2-3.

V. DISCUSSION

14. We now offer the following clarification in response to the Allnet and ETS petitions. We conclude that customers of resellers should generally be able to keep their 800 numbers when they change carriers, just as customers of other 800 providers can. We do not, however, adopt the definition of "customer" proposed by Allnet but instead request the CLC to adopt appropriate rules for implementation of our policy and notify us in writing of such resolution within ninety days of the release of this order.

15. The issue of who is the "customer" for an 800 number can be a difficult one, particularly when the RESPORG's customer of record for the 800 number is a reseller, and not the ultimate end user. Neither the SMS Tariff nor the 800 Guidelines currently sets forth clear standards to apply in this area. Accordingly, we believe some clarification is necessary.

16. We believe that the rights of 800 end users and their resellers must be balanced in these situations. More specifically, we believe that resellers should be able to control the underlying transport arrangements for their customers. To this end, they should be able to request traffic routing changes in the SMS for the 800 numbers they are serving (assuming their customer contracts permit them to do so) and control who shall be the RESPORG for such numbers.[21] We do not believe, however, that resellers should be able to deny their customers the benefits of number portability. If a customer of a reseller wishes to change carriers, it should be able to keep its 800 number to the same extent that customers of other carriers can.[22] Otherwise, resellers' customers would be denied the flexibility and competitive benefits afforded by 800 number portability. We see no compelling reason to deny them this right. Nor do we believe, as Pactel and BellSouth argue, that this will place RESPORGs in the position of having to change their customer records at the request of unknown third parties or interfere with the relationship between the reseller and its customer. RESPORGs can verify the status of the end user seeking the change either through their own records or by checking with the reseller itself. We understand that the CLC is establishing guidelines that will enable RESPORGs to ensure that a party seeking such change is a bona fide end user and entitled to transfer its 800 number to another carrier. This should address the concern that giving end users the benefits of 800 number portability will create confusion or interfere with business relationships.

17. ETS and others argue that resellers are customers and should be treated as such with respect to their 800 numbers. These arguments ignore the unique status of resellers as carriers as well as customers. This unique status sometimes carries with it obligations that are not imposed on other customers.[23] ETS has not presented any reason why we should ignore the status of a reseller as a "carrier" in addressing its rights vis-a-vis its customers to 800 numbers.

18. ETS argues that resellers could be unduly harmed if customers are permitted to transfer their 800 number to another carrier. These arguments ignore that all carriers make investments and commitments in anticipation of an expected level of business. The purchase of a Tariff 12 or other service with volume requirements is similar in this respect to the purchase of transmission facilities: if volume decreases, the carrier faces costs -- penalties in one instance, the cost of unnecessary facilities in the other.[24] For these reasons, we also reject ETS's request that resellers be excused from their Tariff 12 volume commitments if one of their customers is allowed to take its 800 number.

19. While we therefore agree as a matter of policy with those parties who argue that the end user subscriber of a reseller should be able to move its 800 number to another carrier, we decline to adopt the definitional solution proposed by Allnet. We understand that the CLC has been addressing the issue of who is a "customer" for 800 number portability purposes and that there are a number of factual scenarios that may not have been contemplated by Allnet's definition.[25] To date the CLC has agreed in principle that end users should generally have the right to retain 800 numbers when changing carriers, though it has identified situations in which this should not be the case, such as if the 800 number is shared by multiple customers.[26] We endorse this action and request the CLC to continue addressing these issues. We further request the CLC to seek final resolution of these issues and to notify the Chief of the Common Carrier Bureau in writing of the specifics of such resolution within ninety days of the release of this order.

VI. ORDERING CLAUSES

20. Accordingly, pursuant to the authority contained in Sections 1, 3, 4, 201-205 and 208 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 153, 154, 201-205, and 208, IT IS ORDERED that the Petition for Declaratory Ruling or, in the Alternative, Rulemaking filed by Allnet is HEREBY GRANTED IN PART as described in this order and is otherwise DENIED and that the Petition for Declaratory Ruling filed by ETS is DENIED.

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[21] Such control is necessary so that resellers can properly manage their networks. If an end user wishes to terminate service with the reseller, however, the end user may take its 800 number to a new RESPORG.

[22] It is generally agreed that there may be certain exceptional situations in which an 800 user should not be able to take advantage of number portability. For example, if several users share one 800 number, none can take that number to another carrier. *See e.g.*, Sprint Comments at 2, Long Distance Partnership Reply at 2. This is true, however, for any customer, not just the customers of resellers. We understand that the CLC is addressing these issues as part of its consideration of who is a "customer" for 800 number portability purposes. *See infra* at para. 19.

[23] For example, as common carriers, resellers must comply with Title II of the Communications Act.

[24] ETS can, of course, seek long-term contract commitments from its customers. Nothing in this order affects the right of ETS to sue a customer for breach of contract, if it violates a term commitment.

[25] *See e.g.*, Draft Minutes from the August 17-18, 1993, CLC Ad Hoc 800 Database Committee Meeting (Issue 046).

[26] *See* Letter from Carol Schultz, Senior Manager, Regulatory Affairs, MCI, to William F. Caton, Acting Secretary, FCC, July 1, 1993. We note also that in some cases, the reseller may be the end user, for example, if the 800 number is used by the reseller for administrative purposes.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: October 13, 1993

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON THE PETITION FOR EXPEDITED RELIEF FILED BY THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

On September 2, 1993, the American Public Communications Council (APCC) filed a petition for expedited relief requesting that the Commission require MCI and AT&T to begin immediately paying compensation, at a rate of 50 cents per call, to private payphone providers (PPO) for originating 1-800-COLLECT and 1-800-OPERATOR interstate access code calls.

APCC states that the Commission determined in its May 8, 1992 *Second Report and Order*, 7 FCC Rcd 3251 (1992), that PPOs are entitled to receive compensation for the use of their payphones in originating interstate access code calls. APCC further states that 1-800-COLLECT and 1-800-OPERATOR services were implemented after release of the *Second Report and Order* and therefore were not considered when the Commission established the $6 per payphone per month comparison rate. APCC argues that these new services have greatly increased the number of access code calls and that AT&T's and MCI's compensation obligation should be adjusted accordingly.

Interested parties are to file comments on this petition by **November 1, 1993,** and reply comments by **November 16, 1993,** with the Secretary, FCC 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition can be obtained from ITS, Inc. at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§1.1200-1.1216. For further information contact Michael Carowitz, Policy and Program Planning Division, Common Carrier Bureau, at (202) 632-1303.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BP Oil Company — No. 342513

Application for Private Land Mobile and General Mobile Radio Services

In the Matter of — No. 343031

Burbank-Glendale-Pasadena Airport

Application for Private Land Mobile and General Mobile Radio Services

In the Matter of — No. 344498

Salt Lake City Airport Authority

Application for Private Land Mobile and General Mobile Radio Services

In the Matter of — No. 345273

Orlando-Orange Co. Expressway Authority

Application for Private Land Mobile and General Mobile Radio Services

In the Matter of — No. 347230

Vulcan Chemicals, Inc.

Application for Private Land Mobile and General Mobile Radio Services

ORDER

Adopted: August 20, 1993; Released: October 13, 1993

By the Commission:

I. INTRODUCTION/BACKGROUND

1. On March 11, 1993, we adopted the *Notice of Proposed Rule Making* in PR Docket No. 93-61, proposing to replace our existing interim rules governing the licensing and operation of Automatic Vehicle Monitoring (AVM) systems with new permanent provisions, and to rename the service the Location and Monitoring Service (LMS).[1] In respects relevant here, our proposed permanent rules include a rule change that would separate narrowband and wideband LMS systems. Specifically, we proposed that all narrowband systems be licensed in the 902-904, 912-918, and 926-928 MHz bands, and that all wideband pulse-ranging systems be licensed in the 904-912 and 918-926 MHz bands. Under our current rules and practices, in effect for nearly twenty years, licenses for both wideband and narrowband systems have consistently been issued on a shared, non-exclusive basis in the 904-912 and 918-926 MHz bands.[2]

2. Our rule making in PR Docket No. 93-61 remains outstanding. During the pendency of the rule making, North American Teletrac and Location Technologies, Inc., through their joint venture, PacTel Teletrac (PacTel) filed an Application for Freeze, Petition for Stay, and Application for Review,[3] all of which, along with several pleadings filed in response thereto,[4] are presently before us. In its Application for Freeze, PacTel asks us to freeze all additional awards of AVM licenses and special temporary authorizations in the 904-912 and 918-926 MHz bands pending completion of PR Docket No. 93-61. Relatedly, in its Application for Review and Petition for Stay, PacTel asks us to review the grant of several specific AVM licenses and to stay the grant thereof until its Application for Review has been ruled on. For the reasons stated herein, PacTel's Application for Freeze and Application for Review are denied, and its Petition for Stay is dismissed as moot.

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[1] Notice of Proposed Rule Making, PR Docket No. 93-61, 8 FCC Rcd 2502 (1993) [hereinafter *Notice*].

[2] *Id.* at 2504. The remaining bands, 903-904 and 926-927 MHz, are currently licensed only on a developmental basis for narrowband-type systems. There has, to date, been very little activity in these bands.

[3] North American Teletrac and Location Technologies, Inc., Application for Freeze, PR Docket No. 93-61 (filed May 21, 1993); North American Teletrac and Location Technologies, Inc., Petition for Stay, File Nos. 342513, 343031, 345273, 347230, 344498 (filed May 21, 1993); North American Teletrac and Location Technologies, Inc., Application for Review, File Nos. 342513, 343031, 345273, 347230, 344498 (filed May 21, 1993). PacTel also filed a Supplemental Reply on May 25, 1993, and a Reply to Oppositions to Application for Freeze on June 16, 1993. On June 23, 1993, PacTel withdrew from its Application for Review and Petition for Stay those portions challenging Application File No. 344498.

[4] Amtech Corporation, Opposition to Application for Freeze, PR Docket No. 93-61 (filed June 4, 1993); Association of American Railroads, Opposition to Application for Freeze, PR Docket No. 93-61 (filed June 7, 1993); Pinpoint Communications, Inc., Opposition to Application for Freeze, PR Docket No. 93-61 (filed June 4, 1993); Amtech Corporation, Opposition to Petition for Stay, File Nos. 342513, 343031, 344498, 347230 (filed June 9, 1993); Amtech Corporation, Opposition to Application for Review, File Nos. 342513, 343031, 344498, 347230 (filed June 9, 1993); Mark IV IVHS Division, Opposition to Application for Review and Petition for Stay, File No. 345273 (filed June 9, 1993); MobileVision, L.P., Comments in Support of Teletrac's Petition to Deny, File Nos. 347483, *et al.*, (filed June 18, 1993); Southwestern Bell Mobile Systems, Inc., Informal Comments Concerning North American Teletrac and Location Technologies, Inc. Application for Freeze, PR Docket No. 93-61 (filed June 28, 1993); New Jersey Highway Authority, *et al.* Opposition to Application for Freeze, PR Docket No. 93-61 (filed June 22, 1993).

II. DISCUSSION

3. In each of its pleadings, PacTel premises its request for relief on the assertion that only one wideband pulse-ranging system per segment was intended to be accommodated in the 904-912 and 918-926 MHz bands. On this basis, PacTel challenges the Private Radio Bureau's decision to license narrowband operators and more than two wideband systems per market on these frequencies. In particular, in its Application for Freeze, PacTel argues that one of our existing interim rules, 47 C.F.R. § 90.239(c), requires separation of wideband and narrowband AVM systems and that the continued licensing of both types of operations in the same allocation, as well as the licensing of more than one wideband system per segment, will cause unacceptable interference to existing wideband operators, such as PacTel, and may undermine the objectives enunciated in the *Notice*. Similarly, in its Application for Review, PacTel challenges several recent narrowband and wideband AVM license grants on the ground that the issuance thereof is contrary to the interim rule. PacTel also contends in this pleading that the Private Radio Bureau transgressed its due process rights by issuing the challenged licenses without first ruling on petitions to deny filed by PacTel. In its Petition for Stay, PacTel urges that stay of the grant of the challenged licenses during the pendency of its Application for Review is necessary to protect its system from interference, and that its request satisfies the four-pronged showing prerequisite to issuance of a stay.[5]

4. Of the seven parties responding to PacTel's pleadings, only one, MobileVision, L.P., supports PacTel's position. The remaining commenters are in unanimous disagreement with PacTel's underlying argument concerning the lawfulness of our current licensing practices Section 90.239. In addition, these commenters unanimously contend that the relief PacTel requests is inappropriate because it asks us to prejudge the outcome of PR Docket No. 93-61.

5. At the outset, as discussed at length in the *Notice*, we disagree with PacTel's assertion that only one wideband system per segment was intended to be accommodated in the 904-912 and 918-926 MHz bands. PacTel raised this argument in its Petition for Rule Making in PR Docket No. 93-61. In rejecting PacTel's contention, we stated that we did not find sufficient evidence in any of our past proceedings or in the interim rule to support this view. Specifically, we stated that the interim rule was written in a manner intended to promote technological and marketplace development of AVM systems, a goal that would be undermined by restrictive licensing methods. In addition, we noted that at the time the interim rule was adopted, exclusive licensing had not yet been introduced in the private land mobile services.[6] As aforementioned, since its adoption nearly twenty years ago, we have consistently interpreted Section 90.239 to permit sharing, and have issued hundreds of AVM licenses on a shared basis. We remain convinced of the correctness of this interpretation. Whether or not we will find it in the public interest to adopt permanent rules that grant LMS licensees some measure of exclusivity is an issue that remains open to question, to be resolved after examination of the complete record in PR Docket No. 93-61.

6. On similar grounds, we agree with those parties who assert that the method for licensing LMS systems is a point placed in issue by the *Notice*, and that consequently, the relief PacTel requests in its Petition for Freeze, Application for Review, and Petition for Stay is inappropriate because the grant thereof would prejudge our outstanding rule making. Although we proposed in the *Notice* to separate narrowband and wideband operations, we did not state definitively that separate licensing was required or even necessarily most appropriate. On the contrary, we stated that we remain open to alternative methods for future licensing of LMS systems. To hold at this point that narrowband and wideband AVM operations must be licensed separately, or that only one wideband system should be allowed in each segment of the 904-912 and 918-926 MHz bands, would imply that we had already selected a licensing scheme without regard to the commenters' views on this heavily contested issue.

7. An award of the relief PacTel requests is inappropriate for the additional reason that PacTel has failed to demonstrate that absent the grant of its request for freeze, either it or the public interest will suffer irreparable harm. Significantly, in the *Notice* we explicitly advised all AVM licensees that because of the scope of our proposals, the final rules eventually adopted could require any licensee, regardless of the type of system or frequencies involved, to modify its operations.[7] In view of this proviso putting all AVM licensees on notice, PacTel cannot be heard to complain of irreparable harm, particularly if we have not yet made any final decisions with respect to our pending proposals. Furthermore, although it is within our discretion to impose a freeze on additional licensing, we generally have done so only where we have found that a failure to do so may inhibit our regulatory options.[8] No such showing has been made here.

8. Finally, with regard to PacTel's claim that the issuance of the licenses challenged in its Application for Review violated its due process rights, we note that PacTel has overlooked the fundamental fact that the rules governing private radio applications and proceedings do not contemplate the filing of petitions to deny. *See generally* 47 U.S.C. §§ 309(b), 309(d)(1); 47 C.F.R. §§ 1.901-1.981. Accordingly, the Private Radio Bureau committed no error, constitutional or otherwise, in granting the applications at issue without specifically addressing the petitions to deny. Rather, the Bureau appropriately treated the petitions to

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[5] *See* Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977) (petitioner seeking issuance of a stay must demonstrate (1) a substantial likelihood of success on the merits, (2) that failure to grant the stay would cause irreparable injury, (3) that grant of the stay will not harm other interested parties, and (4) that grant of the stay is in the public interest).

[6] *See* 8 FCC Rcd at 2504 n.29.

[7] *Notice*, 8 FCC Rcd at 2507 n.56.

[8] *See, e.g.*, Kessler v. FCC, 326 F.2d 673 (D.C. Cir. 1963); In re Acceptance of 929-930 MHz One-Way Paging Applications, DA No. 91-1257, 6 FCC Rcd 6024 (1991). It is generally our practice, during the pendency of a proposal to amend our licensing mechanisms, to continue using existing licensing procedures. For example, during the pendency of our rule making in PR Docket No. 91-72, 6 FCC Rcd 2017 (1991), in which we broadly proposed to restructure licensing in the Special Emergency Radio Service by creating the Emergency Medical Radio Service, we continued licensing pursuant to usual practices. Likewise, although our *Notice* in PR Docket No. 92-235, 7 FCC Rcd 8105 (1992), contains proposals that completely overhaul existing private radio licensing procedures, we are continuing to license according to our usual methods during the pendency of the proceeding.

deny as informal objections pursuant to 47 C.F.R. § 1.41 and found nothing that justified denying the applications. In light of our discussion in the foregoing paragraphs, we agree with the Bureau that the grant of the applications was proper.[9]

9. Accordingly, IT IS ORDERED that the Application for Freeze and Application for Review filed by North American Teletrac and Location Technologies, through their joint venture, PacTel Teletrac, are DENIED.

10. IT IS FURTHER ORDERED that the Petition for Stay filed by North American Teletrac and Location Technologies, through their joint venture, PacTel Teletrac, is DISMISSED as moot.

11. For additional information with regard to this *Order*, contact Steve Sharkey, Rules Branch, Private Radio Bureau, (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[9] In view of our decision to deny PacTel's Applications for Review of the grant of the applications in questions, we dismiss its request for stay of those grants as moot.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-106

In the Matter of

Amendment of Part 74 of the
Commission's Rules Governing
Use of the Frequencies in
the Instructional Television
Fixed Service

ORDER GRANTING EXTENSION OF TIME

Adopted: September 27, 1993; Released: September 28, 1993

By the Chief, Mass Media Bureau:

1. This action seeks comment on a compromise proposed in connection with the *Notice of Proposed Rule Making* in MM Docket No. 93-106, in which the Commission proposed to amend Section 74.931(a) and (e)(2), 47 C.F.R. §74.931(a), (e)(2), on an interim basis to permit an Instructional Television Fixed Service (ITFS) licensee to satisfy its minimum formal educational and ITFS programming obligations by "channel loading." Channel loading would permit a multiple-channel ITFS licensee leasing excess capacity to transmit all of the requisite weekly, per-channel programming over fewer than all of its authorized channels. The reply comment period, initially set to expire on July 29, 1993, was extended to August 19, 1993 in response to a request by the Wireless Cable Association International, Inc. (WCA),[1] which indicated the imminence of a compromise agreement in connection with the NPRM. *See Order*, DA 93-961 (released July 28, 1993).

2. On August 19, 1993, WCA submitted a compromise agreed to by WCA, the National ITFS Association (NIA),[2] and ITFS Parties.[3] The compromise contains five elements, all of which, the parties note, must be adopted in order to remain a supportable agreement. First, the agreement provides that each ITFS licensee will be required to preserve for immediate use or ready recapture at least 40 hours per channel per week for the transmission of ITFS programming. These rights cannot be abridged by contract. Second, each ITFS licensee, according to the compromise, will be required to actually transmit at least the minimum required ITFS programming of 20 hours per week for each channel licensed to it (12 hours per channel per week for the first two years, as currently permitted). However, each ITFS licensee will be permitted to "load" this 20-hour per channel per week programming on fewer than all of the channels for which the ITFS licensee is authorized to operate. All of the minimum amount of programming, the 20 hours per channel per week, even if loaded, must be transmitted on channels licensed to the ITFS licensee. Third, as to satisfaction of the minimum recapture requirement, hours 21 through 40, ITFS licensees are required to retain the right, upon the currently required one-year notice, to transmit multiple programs simultaneously. Transmission of that programming, if the ITFS licensee so elects, may be over any MDS or ITFS channel in the "system."[4] Fourth, compliance with these terms will establish that the applicant/licensee has established need for its channels under Section 74.902(d), 47 C.F.R. §74.902(d), and will entitle the applicant/licensee to an initial or renewed license. Further, the compromise states, no demerit will be suffered by an applicant proposing channel loading which is also engaged in a comparative selection process. Nor will channel loading or system-wide scheduling have adverse consequences for a renewal application. Finally, this compromise, according to the terms of the agreement, will not serve as a basis for future efforts to seek reallocation of non-loaded ITFS spectrum for commercial use, and the parties to the compromise agree not to seek any such reallocation. Issues not addressed by the compromise include safeguards initially proposed by several educators as necessary to the implementation of channel loading and how such a scheme would be treated in the context of a four-channel waiver request.

3. The Commission has reached no determination as to the proposed compromise. We believe that granting a limited extension of time to file further reply comments on the compromise agreement would serve the public interest. Parties are requested to limit their comments to the elements of the compromise and to any issues directly related to those provisions. A copy of the compromise agreement will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

4. Accordingly, IT IS ORDERED, That, pursuant to authority delegated to the Mass Media Bureau under Section 0.283 of the Commission's Rules, 47 C.F.R. §0.283, the time for filing comments in response to the compromise agreement IS EXTENDED to October 28, 1993.

5. For further information concerning this proceeding, contact Anne Lucey, Distribution Services Branch, Mass Media Bureau, (202) 632-6357.

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[1] WCA's members include licensees in the operation of virtually every wireless cable system in the United States, including ITFS and Multipoint Distribution Service (MDS), as well as programming networks and wireless cable equipment manufacturers.

[2] NIA is a national association of more than 60 educators in 26 states and the District of Columbia which utilize ITFS to provide educational services to students enrolled in for-credit courses in elementary, secondary, college, post-graduate and career training.

[3] Although not a formal organization, a group of educators, which filed joint comments to the NPRM, refers to itself as "ITFS Parties." Comprising that group are: American Council on Education, American Association of Community Colleges, Alliance for Higher Education, Arizona Board of Regents for Benefit of the University of Arizona, Board of Regents of the University of Wisconsin System, Iowa Public Broadcasting Board, Regents of the University of New Mexico and Board of Education of the City of Albuquerque, South Carolina Educational Television Commission, State of Wisconsin - Educational Communications Board, and the University of Maine System.

[4] A system is composed of several ITFS and MDS channels whose licensees opt to cooperate to form a system in a given market.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief. Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Review of Part 73
of the Commission's Rules

ORDER

Adopted: September 27, 1993; Released: September 27, 1993

By the Chief, Mass Media Bureau:

1. On October 1, 1993, the Office of the Federal Register will issue the 1993 Code of Federal Regulations (CFR) for Title 47. In order to make the new CFR as accurate as possible, we have reviewed the 1992 edition and identified outmoded and/or inconsistent information. Accordingly, this *Order* amends the Commission's Rules to reflect editorial changes to 47 CFR Parts 73 and 74. This *Order* makes no substantive changes that impose additional burdens or remove provisions relied upon by licensees or the public. Additionally, we believe that these revisions will serve the public interest. This information is amended as part of the Agency's oversight function.

2. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Because these amendments only interpret and clarify the existing language of Parts 73 and 74, prior notice of rule making is not required. 47 CFR Section 1.412(c). For this same reason, these amendments may become effective upon publication in the *Federal Register*. 47 CFR Section 1.427(b). Because a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

3. Therefore, IT IS ORDERED, That pursuant to Sections 4, 5, and 303, of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations ARE AMENDED as set forth below, effective upon publication in the *Federal Register*.

4. For further information on this *Order*, call Rita S. McDonald, Policy and Rules Division at (202) 632-5414.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

APPENDIX

47 CFR Part 73 is amended as follows:

PART 73 -- RADIO BROADCAST SERVICES

5. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334

6. The Alphabetical Index at the end of Part 73 is amended by adding two new listings to read as follows:

Alphabetical Index -- Part 73

* * * * *

Hard Look Deficiencies and Amendments (as modified) (FM) .....73.3522(a)(6)

* * * * *

Minimum Filing Requirement (FM) .....73.3564(a)

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7. The Table of Allotments in Section 73.202(b) is amended by revising the spelling of "Owasso" (Michigan) to "Owosso".

8. Section 73.520 is redesignated as Section 73.672.

9. Section 73.614 is amended by removing the asterisks at the end of the first equation following paragraph (b)(1).

10. Section 73.682 is amended by removing Schedule I.

11. Section 73.1635 is amended by revising the last sentence in paragraph (a)(4) to read as follows:

§ 73.1635 Special temporary authorizations (STA).

(a) * * *

(4) * * * The permittee or licensee must demonstrate that any further extensions requested are necessary and that all steps to resume normal operation are being undertaken in an expeditious and timely fashion.

* * * * *

12. Section 73.3522 is amended by revising the bracketed information starting at the fourth sentence to read as follows:

§ 73.3522 Amendment of applications.

(a) * * *

(6) * * * [For minimum filing requirements see Section 73.3564(a). Examples of tender defects appear at 50 FR 19936 at 19945-46 (May 13, 1985), *reprinted as* Appendix D, *Report and Order*, MM Docket No. 91-347, 7 FCC Rcd 5074, 5083-88 (1992). For examples of acceptance defects, see 49 FR 47331.] * * *

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13. Section 73.3545 is amended by revising the reference to "Section 325(b)" in the first sentence, to "Section 325(c)".

14. Section 73.3555 is amended by revising the phrase "FM commercial stations" in paragraph (a)(1)(ii) to "2 FM commercial stations" and by revising the reference to "a proxy for each data." in the note following paragraph (a)(1)(ii) to "a proxy for such data."

15. Section 73.3564 is amended by revising the first sentence in paragraph (a)(2) to read as follows:

§ 73.3564 Acceptance of applications.

(a) * * *

(2) The application must not omit more than 3 of the second tier items specified in Appendix C, *Report and Order*, MM Docket No. 91-347, 7 FCC Rcd 5074, 5081-82 (1992). * * *

* * * * *

16. Section 73.3580 is amended by revising the reference to "Section 325(b)" in the first sentence of paragraph (a)(6), to read "Section 325(c)".

17. Section 73.3594 is amended by revising the reference to "Section 325(b)" in the first sentence of paragraph (a)(2), to "Section 325(c)".

PART 74 -- EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

18. The authority citation for Part 74 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

19. Section 74.602(e) is amended by revising the reference to "broadcast network -- "work entities", to "broadcast network entities".

20. The table at the end of Section 74.637 is amended by revising the reference to 20 under the column headed "Maximum authorized bandwidth (MHz)" to read 25.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-162

In the Matter of

Local Exchange Carriers' Rates,
Terms, and Conditions for Expanded
Interconnection for Special Access

Motion for Extension of Time

ORDER

Adopted: September 27, 1993; Released: September 28, 1993

By the Chief, Tariff Division, Common Carrier Bureau:

1. On August 5, 1993, the Commission released an Order[1] granting all parties an additional week, until September 20, 1993, to file oppositions to direct cases filed by local exchange carriers in the above-referenced docket. Replies to the oppositions are scheduled to be filed September 30, 1993.

2. On September 23, 1993, Southwestern Bell Telephone Company (SWB) filed a motion for an extension of time, until October 15, 1993, in which to file its reply to the oppositions to its direct case. SWB states that since the oppositions were filed on September 20, they were not effectively received in SWB's offices in St. Louis, Missouri until September 21, allowing SWB only seven days in which to respond to the arguments presented. SWB argues that the oppositions contain hundreds of pages of argument and calculations, and more time is needed to properly respond to these oppositions.

3. The Common Carrier Bureau has reviewed SWB's request for extension of time and has determined that good cause has not been shown to extend the period for filing replies to the oppositions.

4. Therefore, IT IS ORDERED that the motion filed by SWB to extend the deadline for filing a reply to the oppositions to the direct cases in the above-referenced proceeding IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[1] 800 Data Base Access Tariffs and the 800 Service Management System Tariffs, CC Docket No. 92-129, 8 FCC 5447 (1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-129

PUBLIC NOTICE

Released: September 27, 1993

Participating Bell Operating Companies, US West and GTE Request Waivers of Requirement to Disclose Cost Support

Pleading Cycle Established

COMMENTS: October 12, 1993
REPLY COMMENTS: October 19, 1993

On July 19, 1993, the Bureau released an order designating issues in its investigation of 800 data base tariffs, contained in the above referenced docket.[1] The order stated, among other things, that carriers must disclose computer models on the record if their justification for their rates is based on the use of the model.[2] On September 16, 1993, the participating Bell Operating Companies (participating BOCs)[3] filed a petition for waiver of any requirement that they disclose the Common Channel Signalling Cost Information System (CCSCIS), a computer model developed by Bell Communications Research, Inc. (BellCore). On September 17, 1993, US West filed a "Contingent Petition for Waiver," requesting that the Commission waive the requirement in the Bureau order that US West's cost model, for which it seeks proprietary treatment, be entered on the public record. On September 20, 1993, the GTE Service Corporation filed a petition asking the Commission to waive the requirement that the GTE Telephone Operating Companies and GTE System Telephone Companies disclose the computer model which was used to develop costs for their rates in this proceeding.

Petitioners are all local exchange companies that have used a computer model to develop costs for the rates in the 800 data base query tariffs that they have filed with the Commission. They are each seeking proprietary treatment for the model they have used.

Interested parties may file comments on these petitions for waiver no later than October 12, 1993. Replies should be filed by October 19, 1993.

An original and four copies of all comments and replies must be filed in accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 and one copy with the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Thomas G. David, Tariff Division, Common Carrier Bureau, (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

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[1] 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation, CC Docket 93-129, 8 FCC Rcd 5132 (Com. Car. Bur., July 19, 1993).

[2] *Id.* at 5135.

[3] The participating BOCs are The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, New Jersey Bell Telephone Company, Pacific Bell, Nevada Bell, Southwestern Bell Telephone Company, BellSouth Telecommunications, Inc., New York Telephone Company, New England Telephone and Telegraph Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Illinois Bell Telephone Company.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
September 27, 1993

Released: September 28, 1993

St. Croix Wireless Co., Inc.
P.O. Box 25016
St. Croix, VI 00824

IN REPLY REFER TO:
1800B3-DEB

In re: WAVI; Christiansted, VI
St. Croix Wireless Co., Inc.
BPH-930402IE

Gentlemen:

This letter is in reference to the above-captioned application for construction permit for station WAVI, Christiansted, VI. This application, filed by the permittee of WAVI, St. Croix Wireless Co. Inc. ("Wireless"), proposes Class B facilities on Channel 228, as authorized by Docket 91-296.

The site proposed for WAVI in this application is located 167.4 km from first-adjacent channel Class B station WZNT, San Juan, PR. This spacing is 1.6 km less than the 169 km minimum spacing required under 47 CFR § 73.207. Recognizing this, Wireless has requested processing under the contour overlap rule, 47 CFR § 73.215. Further, it has requested waiver of that portion of the rule which defines the protected and interfering contours to be employed (47 CFR § 73.215(a)(1)).

Because of the greater antenna heights permitted for stations in Puerto Rico and the Virgin Islands, the contour overlap provisions of § 73.215 generally fail as an effective alternative to the spacing criteria of § 73.207. This is because, in many circumstances, contour overlap already exists, even between fully spaced stations.[1] Thus, use of the contour overlap rules pursuant to § 73.215 does not afford relief for many Puerto Rico or Virgin Islands stations seeking to use a short-spaced site. To address this matter, upon reconsideration the Commission adopted rule 47 CFR § 73.215(a)(4) which permits stations in Puerto Rico and the Virgin Islands the alternative of showing that the 1 mV/m (60 dBu) contour from the short-spaced site is not extended past the present 1 mV/m location. *See* the *Memorandum Opinion and Order* in MM Docket 87-121, 6 FCC Rcd 5356, 56 Fed. Reg. 57290 (1991), paragraphs 51-52. However, in the present instance § 73.215(a)(4) also provides no relief.[2]

Wireless has requested that subsection 73.215(a)(1) be waived to permit an alternate method to be employed. Wireless notes that the maximum reference facilities for Class B stations in Puerto Rico and the Virgin Islands is 50 kW effective radiated power (ERP) and 472 meters antenna height above average terrain (HAAT). Assuming two first-adjacent channel Class B stations at the minimum spacing specified in 47 CFR § 73.207 (169 km), and using the 6 dB protection ratio for first-adjacent channel stations from § 73.215(a)(2), Wireless found that the actual contour protected by this spacing is the 63 dBu contour, and that the corresponding interfering contour is the 57 dBu contour. Employing the 63 dBu contour as the standard of protection, and using the 57 dBu contour as the interfering contour, Wireless determined that neither WAVI nor WZNT will receive interference from the other pursuant to the contour overlap provisions of § 73.215 (except §§ 73.215(a)(1) and (a)(4)). Consequently, Wireless submits that use of this method and waiver of the rule is warranted, since neither station would receive interference beyond that contemplated by the existing spacing rules.

We concur with Wireless' technical findings. Furthermore, we also note that this procedure does not affect WZNT's right to achieve maximum Class B facilities (50 kW ERP/472 meters HAAT) from its present transmitter site under § 73.207. As Wireless indicated, this procedure affords WZNT the same protection which it presently receives under the spacing rule (§ 73.207). Finally, by using the provisions of § 73.215 as modified to account for the higher HAAT limits specified in the rules for Puerto Rico and the Virgin Islands, Wireless' proposal would comply with the original intent of the rule, which is to afford stations the flexibility of considering short-spaced transmitter sites while protecting other stations from interference in excess of that which may occur under the Commission's spacing rules. Accordingly, we find that waiver of 47 CFR § 73.215(a)(1) is warranted; the requested waiver IS HEREBY GRANTED. Application BPH-930402IE, being otherwise acceptable for filing, IS HEREBY GRANTED. This action is taken pursuant to 47 CFR § 0.283.

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[1] On the mainland, the spacing rules in 47 CFR § 73.207 are designed so that two stations of maximum class at minimum separation will not cause interference to either station's protected service contour (54 dBu for Class B stations, 57 dBu for Class B1, and 60 dBu for all other classes). However, because of the greater antenna heights permitted for stations in Puerto Rico and the Virgin Islands, the protected and interfering contours extend further, and often overlap. The attached table shows the actual protected and interfering contours for Class A, B1, and B stations under § 73.207 (assuming maximum facilities for each station and uniform terrain) in Puerto Rico and the Virgin Islands.

[2] Because WAVI was initially authorized Class B operation in Docket 91-296, the station has no existing 1 mV/m Class B contour to compare the proposed 1 mV/m contour against. Commission policy does not allow a § 73.215 applicant to compare its proposed protected or interfering contour against a hypothetical or unbuilt construction permit's protected or interfering contour; such proposals can only be evaluated against an existing contour, where the contour in question is actually being generated by an operating station. *See Letter from Larry D. Eads, Chief, Audio Services Division to Interstate Broadcasting Systems of Arizona, Inc. (KRDS-FM)*, dated January 5, 1993. Without a reference to an existing contour, a station cannot apply Paragraph 54 of the *Memorandum Opinion and Order* in MM Docket 87-121, *supra*, which gives applicants the right to maintain existing overlap. Thus, WAVI's proposal to specify a Class B 1 mV/m contour for the first time does not comply with § 73.215(a)(4).

Sincerely,

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

Actual protected and interfering contours under 47 C.F.R. Section 73.207 in Puerto Rico and the Virgin Islands

STATION WITH INTERFERING CONTOUR		STATION WITH PROTECTED CONTOUR					
		Class A		Class B1		Class B	
		Interfering	Protected	Interfering	Protected	Interfering	Protected
Co-Channel	Class A	46	66	41	61	40	60
	Class B1	43	63	39	59	38	58
	Class B	45	65	41	61	41	61
		Interfering	Protected	Interfering	Protected	Interfering	Protected
1st Adj. Channel	Class A	61	67	56	62	59	65
	Class B1	57	63	54	60	54	60
	Class B	62	68	56	62	57	63
		Interfering	Protected	Interfering	Protected	Interfering	Protected
2nd-3rd Adj. Ch.	Class A	107	67	100	60	104	64
	Class B1	99	59	100	60	104	64
	Class B	94	54	94	54	104	64

Maximum permitted facilities assumed for each station pursuant to 47 C.F.R. Section 73.211(b)(3):

6 kW ERP/240 meters HAAT – Class A
25 kW ERP/150 meters HAAT – Class B1
50 kW ERP/472 meters HAAT – Class B

All contours above in dBu

Uniform terrain is assumed for this table

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 90-314
PR Docket No. 93-252
PP Docket No. 93-253

In the Matter of

Partial Waiver of the
Sunshine Period Prohibition

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

ORDER

Adopted: September 29, 1993; Released: September 29, 1993

By the Commission:

1. On September 23, 1993, the Commission adopted orders or notices of proposed rulemaking in the above-captioned proceedings relating to personal communications services, spectrum auctions, and regulation of mobile service providers.[1] On September 28 - October 1, 1993, Commission personnel are scheduled to participate in the "1993 Mobile Communications Marketplace" convention sponsored by Telocator that will involve discussions of these matters. In addition, on October 4 - October 6, 1993, Commission personnel will be participating in "USTA's 96th Annual Convention" hosted by the United States Telephone Association, which will also involve discussions of these matters. The Commission believes participation by Commission personnel in the scheduled panels and presentations on these issues associated with these conventions will serve the public interest. Accordingly, we are, on our own motion, waiving the Sunshine Period prohibition contained in our *ex parte* rules, 47 C.F.R. § 1.1203, for the limited purpose of permitting participation by Commission personnel in the scheduled panels and presentations on these issues associated with these conventions. Any presentations made to Commission decision-makers at these events in connection with these or other pending proceedings that go beyond written comments or filings must be disclosed pursuant to the *ex parte* rules. *See* 47 C.F.R. § 1.1206.

2. Accordingly, IT IS ORDERED, that Section 1.1203 of the Commission's Rules, 47 C.F.R. § 1.1203, IS WAIVED to the extent described herein.

[1] *See Amendment of the Commission's Rules to Establish New Personal Communications Service, Second Report and Order*, GEN Docket No. 90-314, FCC 93-451 (adopted September 23, 1993); *Implementation of Title VI of the Omnibus Budget Reconciliation Act of 1993, Notice of Proposed Rulemaking*, PR Docket No. 93-252, FCC 93-454 (adopted September 23, 1993); *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Notice of Proposed Rulemaking*, PP Docket No. 93-253, FCC 93-455 (adopted September 23, 1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

Allnet Communications
Services, Inc.
Complainant,

v.

Illinois Bell	File Nos. E-89-197
Telephone Co.,	E-89-198
Michigan Bell	E-89-199
Telephone Co.,	E-89-200
The Ohio Bell	
Telephone Co., and	
Wisconsin Bell, Inc.,	
Defendants.	

ORDER

Adopted: October 7, 1993; Released: October 14, 1993

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On May 26, 1989, Allnet Communications Services, Inc. (Allnet) filed the above-captioned complaints against Illinois Bell Telephone Company, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc., (collectively referred to as Ameritech) alleging that the defendants had violated Section 201(b) of the Communications Act[1] by overstating inside wire costs and excess deferred taxes in their rate calculations. Ameritech denied the allegations and moved to dismiss the complaints.

2. On May 16, 1991 the Commission released an Order dismissing Allnet's allegations regarding inside expenses but finding, *inter alia*, that Wisconsin Bell was liable for overstatement of excess deferred taxes.[2] The Commission noted that absent a negotiated settlement between the parties, further proceedings on the issue of damages would be conducted. Allnet appealed the Commission's order with regard to both Ameritech and the other carriers and those appeals are currently stayed.[3]

3. Representatives of Allnet and Ameritech have met in effort to resolve the issues raised in the complaints. On September 13, 1993, Allnet and Ameritech filed a joint motion to dismiss the complaints stating that they had reached a settlement which disposes of all issues in controversy. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for futher litigation and the expenditure of further time and resources of the parties and of this Commission.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 208, and authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the parties' Joint Motion to Dismiss the above-captioned complaints IS GRANTED.

5. IT IS FURTHER ORDERED that the above-captioned complaints ARE DISMISSED WITH PREJUDICE and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Common Carrier Bureau

[1] 47 U.S.C. § 201(b).

[2] Allnet Communications Services, Inc. v. National Exchange Carrier Association, 6 FCC Rcd 2608 (1991), *recon. denied.*, 6 FCC Rcd 5663 (1991).

[3] Allnet Communications Services, Inc. v. FCC, Case No. 91-1562 (D.C. Cir., filed Nov. 19, 1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

C.F. Communications
Corporation,
Complainant,

v.

Century Telephone	File Nos. E-89-170
of Wisconsin, Inc.,	E-89-171
GTE North, Incorporated,	E-89-172
Wisconsin Bell, Inc.,	E-89-180
North-West Telephone Company,	E-89-181
Turtle Lake Telephone Company,	E-89-182
Utelco, Inc.	
Defendants.	

MEMORANDUM OPINION AND ORDER

Adopted: October 1, 1993; Released: October 14, 1993

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. C.F. Communications Corp. ("CFC" or "complainant"), filed the above-captioned complaints alleging that the defendant local exchange carriers (LECs) violated Sections 201(b) and 202(a) of the Communications Act[1] and Part 69 of the Commission's rules[2] by imposing end user common line ("EUCL") charges for access services provided to CFC for its pay telephones.[3] CFC seeks to recover as damages the EUCL charges it has paid to defendants, along with consequential damages, including attorney fees. The defendants filed answers denying the allegations along with motions to dismiss the complaints. In addition, defendant GTE North Incorporated ("GTE") filed a counterclaim alleging that CFC received services pursuant to GTE's access tariff, but failed to pay the appropriate EUCL charges.[4] For the reasons set forth below, we deny CFC's complaint and dismiss GTE's counterclaim.

II. BACKGROUND AND CONTENTIONS OF THE PARTIES

2. This complaint was originally filed as a civil action in the U.S. District Court for the Western District of Wisconsin (*C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc.*, W.D. Wis., Case No. 89-C-0168-C, filed Feb. 16, 1989). On April 27, 1989, the District Court entered an order referring this case to this Commission under the doctrine of primary jurisdiction.[5] On May 10, 1989, CFC filed the instant complaint challenging the defendants' imposition of EUCL charges on the complainant's pay telephones.[6]

3. The facts underlying the complaint are largely undisputed. CFC is a provider of customer-owned coin-operated and coinless pay telephones ("COCOTs") in the State of Wisconsin. The complainant purchases exchange access service from the defendants for its pay telephones which are installed at various locations throughout the state. The crux of CFC's complaint is that it is a "carrier," as defined in Part 69 of the Commission's rules and, therefore, cannot be lawfully assessed EUCL charges for the pay telephone access lines that it obtains from the defendants. CFC also contends that its COCOTs are public pay telephones within the meaning of Section 69.1(ee) of the Commission's rules, and therefore, must be accorded the same access charge treatment as the public payphones of the LECs, that is, they should be exempted from EUCL charges.[7] CFC contends that the defendants are its direct competitors in furnishing public pay telephone service but are not burdened by EUCL or equivalent charges with respect to their pay telephones. CFC argues that under these circumstances, the defendants' imposition of EUCL charges is an act of unjust and unreasonable discrimination in violation of Section 202(a) of the Communications Act.[8]

4. CFC next contends that although a carrier, it is not an "interexchange carrier" within the meaning of Part 69 of the Rules. Therefore, CFC asserts, Section 69.105(a) of the Rules exempts it from the payment of carrier common line charges.

5. In support of CFC, APCC, in its Reply Brief, argues that CFC is a common carrier in the same sense as a telephone company and should, accordingly, be treated the same for access charge purposes. It contends, *inter alia*, that the pay telephones of both CFC and the defendants are equally accessible and perceived to be the same by the general public. The complainant's pay telephone equipment, APCC further argues, is not viewed by the public as being severable from the access line and thus should not be considered "like" other customer premises equipment (CPE) which can be moved from place-to-place. APCC also

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[1] 47 U.S.C. §§ 201(b) and 202(a).

[2] 47 C.F.R. § 69.1 *et seq.* (1991).

[3] Complaint at 2.

[4] The American Public Communications Council ("APCC"), an industry trade association comprised primarily of customer-owned, coin-operated telephone ("COCOT") providers, has moved for leave to intervene in the proceeding soley to address the "carrier end user issue" and submitted a brief with its motion. In addition, the National Exchange Carriers Association ("NECA") filed an *amicus* brief in support of the defendant local exchange carriers. We grant the intervention of APCC and NECA and accept their *amicus* briefs.

[5] Order, Case No. 89-C-0168-C, (Apr. 27, 1989). Under the doctrine of primary jurisdiction, issues not within the conventional experience of judges or requiring the exercise of administrative discretion by agencies created by Congress to regulate the subject matter are referred to the relevant administrative agency for resolution. *See* United States v. Western Pacific Railroad Co., 353 U.S. 59, 63-65 (1956).

[6] On May 11, 1989, CFC filed a motion requesting the Commission to stay the effectiveness of defendants' applicable tariffs pending a Commission decision and a motion for summary decision on the complaint. Defendants opposed the request for stay and motion for summary decision.

[7] CFC argues that its pay telephones cannot be considered semi-public as defendants allege because it makes no private use of the phones. *Id.* CFC adds that because the telephones are public rather than semi-public pay telephones, it is also exempt from subscriber line charges.

[8] CFC Complaint at 7, citing 47 U.S.C. § 202(a).

maintains that the complainant's pay telephones are public rather than semi-public since such identity depends on how these telephones are provided and used rather than on the identity of the provider. Finally, to buttress its argument that COCOT providers are carriers and not end users for purposes of EUCL charge application, APCC points out that certain state regulatory agencies place requirements on COCOT providers to ensure uniformity of public pay telephone service.

6. The defendants advance several alternative arguments to support their contention that they lawfully assessed EUCL charges on the complainant.[9] The defendants first contend that CFC is an "end user," as defined in Section 69.2(m) of the Commission's rules.[10] The defendants also argue that in any event, whether CFC is a carrier or end user is irrelevant since, as a reseller with all communications originating on its own premises, it would be subject to EUCL charges in either case. Therefore, defendants argue, CFC has been properly assessed EUCL charges for the payphone access lines that it obtains from the defendants. The defendants further contend that contrary to CFC's claims, CFC does not provide public pay telephone service, which would exempt it from payment of access charges, but provides "semi-public" pay telephones, capable of alternate public/private use, which are subject to subscriber-line charges under the Commission's rules.[11]

7. NECA, in its Brief in Support of Defendants, argues that the complainant is not a LEC and has been properly assessed EUCL charges by defendants. If the complainant is a carrier, NECA maintains, it is a carrier solely by virtue of its resale activity. In view of this, and the fact that all resale transmissions originate on the complainant's premises, NECA contends that CFC is an end user under Section 69.2(m) of the Commission's rules. According to NECA, CFC's argument that it provides telephone exchange service has no merit since it provides none of the facilities or service elements which make up telephone exchange service under the Communications Act. Rather, NECA argues, CFC provides only terminal equipment which is not a communications service at all.[12]

III. DISCUSSION

8. We have carefully considered the evidence and arguments presented by the parties and conclude that CFC has failed to demonstrate that the defendants improperly assessed it EUCL charges for the pay telephone access lines at issue.

9. Initially, we note that the proper determination of assessable charges for local exchange telecommunications services and facilities derives from the access charge requirements set forth in Part 69 of the Commission's rules. As a result of the methodology established in *MTS and WATS Market Structure*,[13] all LEC costs incurred in connection with exchange plant used by interexchange and non-LEC carriers to originate or terminate interstate or foreign telephone calls are to be recovered in one of two ways: either directly from end users or indirectly from end users, through carrier charges that are assessed on the interexchange carriers that use local exchange facilities to provide an interstate or foreign telecommunication service. *See First Reconsideration Order*, 97 FCC 2d at 705-706. For purposes of implementing this bifurcated cost recovery methodology, Section 69.2(m) of the Commission's rules define the term "end user" as:

> . . . . any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller.

The term telephone company is defined under Section 69.2(hh) of the rules as:

> ... a carrier that provides telephone exchange service as defined in Section 3(r) of the Communications Act of 1934." 47 C.F.R. § 69.2(hh).

10. As a general matter, the Commission has accorded specific and to some extent exceptional, access charge treatment to pay telephone service. In its *Access Charge Order*, the Commission determined that the fixed LEC costs associated with providing local exchange access service would, in general, be recovered through a flat charge imposed on all end users.[14] However, because the end users of pay telephones that originated or terminated interstate services consisted of the transient general public, the Commission adopted a specific exception to the access charge rules, and avoided the flat monthly per line charge in favor of a per call charge that was to be paid by each pay telephone user when he or she placed a call.[15] This methodology for recovering payphone access costs was effective for several months, but was later found by the Commission to be impractical after considering the comments of a number of parties regarding the difficulties inherent in collecting such surcharges from transient end users.[16] In the case of telephone company-provided public pay telephones used to originate interstate or foreign calls, the Commission decided to eliminate the rate element established for coin telephones that can access the services of multiple interexchange carriers, and to reassign LEC costs associated with the provision of such facilities to the common line revenue requirement, to be wholly recovered from the carrier common line charges assessed on interexchange

[9] The arguments raised by defendants in their various pleadings are identical in their essentials. For the sake of convenience and clarity, we will discuss defendants' contentions as if they were part of the same pleading. To the extent that individual defendants raise unique or additional arguments we will address them separately.

[10] 47 C.F.R. Section 69.2(m).

[11] *See e.g.*, GTE Brief at 7.

[12] NECA Brief at p. 6.

[13] MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983) (*Access Charge Order*), *reconsideration*, 97 FCC 2d 682 (1983) (*First Reconsideration Order*), *further reconsideration*, 97 FCC 2d 834 (1984) (*Further Reconsideration*), *aff'd in part and remanded in part, NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

[14] *Access Charge Order* at 242-43.

[15] *Id.*

[16] *See First Reconsideration Order*, 97 FCC 2nd at 705-06.

carriers.[17] This Commission-mandated cost assignment and recovery scheme remains the same regardless of who owns the specific pay telephone instrument that makes use of the LEC access facilities. Accordingly, as long as a pay telephone service provider is a telephone company, and the pay telephone at issue is a "public" rather than a "semi-public" pay telephone, as defined by the Commission's rules, LECs may not properly impose end user access charges for the access facilities utilized by such pay telephones.

11. The crux of CFC's complaint is that its pay telephone service should be treated, for interstate access charge purposes, the same as the public pay telephone service provided by the telephone companies. In support, it posits that it is a common carrier which provides pay telephone service functionally equivalent to the public telephone service of the telephone companies. It argues that because it is neither an end user as that term is defined in Section 69.2(m) of the Rules nor a provider of semi-public telephone service, it cannot be subject to EUCL charges.

12. CFC's claim that it cannot be classified as an end user and, therefore, cannot be subject to EUCL charges is unavailing. While it may be true that CFC has correctly characterized itself as a common carrier, it appears from the record before us that it acquires this status by virtue of resale activities. Specifically, it resells for a profit a local area transmission facility leased from a LEC, such facility constituting a link in an interstate network.[18] The term "end user," within the construct of existing rules, specifically includes resale carriers such as CFC when all relevant communications emanate from the resale carrier's premises. We find this to be the case with CFC's pay telephones. Contrary to CFC's claims, the fact that the premises where such telephones are located are not owned by the carrier is not dispositive. The term "premises" or "premises of the reseller" simply designates the location at which the reseller's equipment is located or its service is offered and does not infer ownership. Since all users of CFC's pay telephones must come to the premises where the telephones are located in order to place calls, CFC is properly classified as an end user under existing rules.

13. CFC's claim that it is a provider of public telephone service within the meaning of that term in Part 69 of the Commission's rules is equally unavailing.[19] CFC's claim in this regard is twofold. It first claims that the use of the term "telephone company" in the public telephone definition was not intended to be exclusive, and second, that since it neither provides semi-public nor limited pay telephone service, it must, by process of elimination, provide public telephone service.[20] While the record supports CFC's assertion that it does not provide limited pay telephone service, we find no record support for its claim that the service it provides cannot be considered semi-public. Although Part 69 defines semi-public telephones only with respect to EUCL payment obligations, its common meaning, as deduced by CFC, derives in actuality from state regulatory practice.[21] Under authority of various state regulatory agencies, telephones defined as public are provided to meet public needs, especially where no other telephone service is available. On the other hand, semi-public pay telephones, under state definitions, are not essential to meeting public needs and can be used alternately as private business telephones. CFC maintains that it does not provide semi-public service because it does not make private use of its pay telephones. Classification as a semi-public telephone, however, does not turn on the question of whether there is actual private use but only on the question of whether it is capable of such use. Each of CFC's telephones is capable of both public and private use because of the way in which the LEC provides them, *i.e.*, through the use of regular subscriber business lines which are modified in certain cases, to handle COCOTS. This is in contrast to public telephone service which is provided over special central office access lines which specifically identify the terminal location as a coin-operated public telephone and limit it from use in other modes. These factors persuade us that CFC is in fact a provider of semi-public telephone service within the meaning of Part 69 of the Commission's rules. We conclude, therefore that CFC's pay telephone service is properly subject to EUCL charges.

14. As a final matter, we dismiss GTE's counterclaim for failure to state a cause of action under the Communications Act. Under Sections 206-209 of the Act, the Commission may find a carrier liable to a customer for damages that result from the carrier's unlawful acts or omissions.[22] This statutory scheme does not, however, establish the Commission as a collection agent for carriers with respect to unpaid tariffed charges. In the normal situation, if a carrier has failed to pay the lawful charges for services or facilities obtained from another carrier, the recourse of the unpaid carrier is an action in contract to compel payment or a termination of service until those charges have been paid.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201, and 206-208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, and 206-208, and the authority delegated under Section 0.291 of

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[17] *Id.*

[18] *See Ambassador, Inc. v. United States*, 325 U.S. 317 (1945); *General Telephone Co. of CA. v. FCC*, 413 F.2d 390 (D.C. Cir. 1969) *cert denied*. 396 U.S. 885 (1969). *See also* New York Telephone Co., 76 FCC 2d 349, 352, *aff'd sub nom. New York Telephone Co. v. FCC*, 631 F.2d 1059 (2d Cir. 1980) (nature of communications determines jurisdiction over facilities).

[19] A public telephone is defined in Section 69.2(ee), 47 C.F.R. § 69.2(ee) as:

> "a telephone provided by a telephone company through which an end-user may originate interstate or foreign telecommunications for which he pays with coins or by credit card, collect or third-number billing procedures."

[20] A limited pay telephone is one which provides access to a single interexchange carrier. A semi-public telephone is one which, among other things, is capable of being used as both a pay telephone and a private business line.

[21] The Commission commonly defers to state practices where there is no overriding public purpose served by asserting federal jurisdiction. *See, e.g.*, Diamond Int'l Corp. v. American Tel. & Tel., 70 FCC 2d 656 (1979), *aff'd sub nom. Diamond International Corporation v. FCC*, Case No. 79-1192 (D.C. Cir. 1980).

[22] *See* 47 U.S.C. § 206-209.

the Commission's rules, 47 C.F.R. § 0.291, that the above-captioned complaints filed by C.F. Communications, Inc. ARE DENIED.

16. IS FURTHER ORDERED that the counterclaim filed by GTE North, Incorporated IS DISMISSED.

17. IT IS FURTHER ORDERED that the Motion for Leave to Intervene filed by the American Public Communication Council IS GRANTED for the limited purpose of filing an *amicus* brief, and that the *amicus* briefs filed by APCC and NECA ARE ACCEPTED into the record.

18. IT IS FURTHER ORDERED that CFC's Motion for Interlocutory Relief and its Motion for Summary Decision ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: October 7, 1993

CITIZENS UTILITIES COMPANY FILES PETITION FOR WAIVER OF SECTIONS 61.41 AND 69.3

Pleading Cycle Established

COMMENTS: October 22, 1993
REPLY COMMENTS: November 1, 1993

On September 21, 1993, Citizens Utilities Company (CUC), on behalf of itself and its telephone operating company subsidiaries, filed a petition for waiver of Sections 61.41(c), (d) and Sections 69.3(e)(11), (i)(4) of the Commission's Rules, 47 C.F.R. §§ 61.41(c), (d) and 69.3(e)(11), (i)(4). CUC seeks to acquire approximately 492,000 access lines from telephone operating company subsidiaries of GTE Corporation (GTE) in the States of Arizona, Idaho, Montana, New York, Tennessee, Utah and West Virginia. CUC requests waiver of the above rule sections so its acquired properties, which are now subject to price cap regulation, may be subject to rate-of-return regulation instead. CUC also requests that these acquired properties be allowed to remain in the National Exchange Carrier Association (NECA) pools for a transitional period after which CUC will establish its own cost-based rates outside the NECA pools. According to CUC, the acquisition of these GTE properties will serve the public interest by enabling each company to focus its resources and expertise in its primary markets and thereby achieve operating efficiencies.

Interested parties may file comments on this petition for waiver no later than **October 22, 1993**. Replies should be filed by **November 1, 1993**.

An original and four copies of all comments and replies must be filed in accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 and one copy with the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Andrew Mulitz or Wanda M. Harris, Tariff Division, Common Carrier Bureau, (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

PC CELLULAR OF KENTUCKY, L.P. File No. 08825-CL-MP-92

For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market No. 443, Kentucky 1 - Fulton Rural Service Area, for Station KNKN 830

MEMORANDUM OPINION AND ORDER

Adopted: October 8, 1993; Released: October 15, 1993

By the Chief, Mobile Services Division:

I. INTRODUCTION

1. PC Cellular of Kentucky, L.P. (PC Cellular), the non-wireline licensee for Kentucky 1 - Fulton Rural Service Area (RSA), on September 25, 1992, filed the captioned application for modified facilities. The proposed modification will result in the Service Area Boundary (SAB) for PC Cellular's existing Paducah, Kentucky cell site extending into three neighboring RSAs. Mo-Tel Cellular, Inc. (Mo-Tel), the Frequency Block A licensee serving the Kentucky 2 - Union RSA, filed a petition to deny.[1] PC Cellular filed an opposition, and Mo-Tel filed a reply. For the reasons stated below, we deny the petition and grant PC Cellular's application.

II. PLEADINGS; DISCUSSION

2. Mo-Tel argues that the proposed extension into its RSA is not *de minimis* and it is not adequately justified. Mo-Tel estimates that the proposal will result in a 12.6 square mile extension into its Cellular Geographic Service Area (CGSA)[2] and, when viewed in conjunction with PC Cellular's previous seemingly minor extensions into Mo-Tel's RSA, it would result in an aggregate extension by PC Cellular of approximately 64 square miles into the RSA. Nor, submits Mo-Tel, has PC Cellular made the requisite showing that its proposed extension into Mo-Tel's RSA is "unavoidable for technical reasons of sound engineering design", as required by 47 CFR § 22.903(d)(1). Finally, Mo-Tel points out that PC Cellular has omitted any reference to the characteristics of the proposed extension area, which includes portions of U.S. Highway 60, state routes 70 and 453, and the population clusters of Smithland and Leadbetter, Kentucky, all of which are located within Mo-Tel's RSA.

3. PC Cellular responds by explaining that subsequent to filing its original application it discovered that the 32.4 watts of power that it proposed would violate Mo-Tel's CGSA. Therefore, it has amended its application to reduce the proposed power to 29.9 watts, and thereby has eliminated the potential intrusion upon Mo-Tel's CGSA. Nevertheless, says PC Cellular, there will still be permissible *de minimis* extensions into the three adjacent RSAs. However, the proposed SAB extension into Mo-Tel's RSA, argues PC Cellular, will only be 8.2 square miles and 1.0 percent of PC Cellular's SAB, bringing the aggregate extension to 47.2 square miles and 5.9 percent of PC Cellular's SAB. Furthermore, argues PC Cellular, because of Paducah's location near the adjacent RSAs' boarders, *de minimis* extensions are necessary for it to provide adequate service to the city.

4. Mo-Tel replies that although PC Cellular has removed the prohibited CGSA overlap, it has failed to comply with the Commission's *de minimis* standard. Mo-Tel argues that PC Cellular has ignored the fact that its signal will rob Mo-Tel of potential sources of local and roamer revenues from the three highways, two population clusters, and a six mile stretch of the Ohio River, all of which are located within Mo-Tel's RSA. In addition, argues Mo-Tel, PC Cellular could have engineered its Paducah facilities to avoid the overlap.

5. Although a cellular licensee's SAB is expected to be confined within its RSA, SAB extensions outside of the authorized market are permitted if they are *de minimis* and the applicant provides a specific engineering explanation as to why the extension is necessary. *See Procedures Update*, 52 Rad. Reg.2d (P&F) 1583, 725, 726 (1982), *aff'd*, *Cellular Radio Service*, 56 Rad. Reg. 2d (P&F) 1583, 1587-88 (1984); Sections 22.903(a) and 22.923(c)(1) of the Commission's Rules; *see also Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules, Second Report and Order*, 7 FCC Rcd 2449, 2456 at n.35, *aff'd*, 8 FCC Rcd 1363, 1381-82 (1993) (stating that case law guidelines for SAB *de minimis* extensions will be applied as adjusted for the new formula for computing service area contours that become effective on July 16, 1992). In evaluating proposed extensions, a variety of factors are taken into consideration, such as the terrain and population of the area in question, the shape of adjoining boundaries, and any extenuating engineering problems. The threshold concern in an analysis of whether an extension is permissible is whether the extension is minor. If it is, then the application's engineering explanation is evaluated. *See, e.g., Western Florida Cellular Telephone Corp.*, 6 FCC Rcd 2032 (Mobile Serv. Div. 1991); *Columbia Cellular Telephone Company*, 6 FCC Rcd 1408 (Mobile Serv. Div. 1991).

6. We find PC Cellular's proposed extension into Mo-Tel's RSA to be relatively small. PC Cellular's calculations demonstrate convincingly that the SAB it proposes would

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[1] The licensees for the two other RSAs, Illinois 8 and Illinois 9, into which PC Cellular's proposed SAB will extend have not opposed PC Cellular's application.

[2] The extension of a licensee's SAB into another's CGSA is not permitted without the consent of the other licensee. *See Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules*, 6 FCC Rcd 6185, 6204 (1991) (*First Report and Order).*

result in an additional penetration into Mo-Tel's RSA of approximately 8.2 square miles, which would be equivalent to 1.0 percent of PC Cellular's SAB, and that its total extension would be approximately 47.2 square miles of Mo-Tel's RSA, equaling 5.9 percent of PC Cellular's SAB. Whereas, Mo-Tel has provided no data to support its claim that the proposed modification would result in a 64 square mile aggregate penetration. In fact, Mo-Tel appears to have abandoned this allegation. In its reply, Mo-Tel states that the PC Cellular's proposed modification of its Paducah site "would result in an aggregate extension from that site of approximately 43.7 square miles...",[3] which is even less than predicted by PC Cellular. Extensions based on a 39 dBu contour criterion, which are less than 20 percent of a carrier's recognized service contours have generally presumed to be *de minimis* and thus permissible if they are justified. *See Alltel Cellular Associates of the Carolinas*, 61 Rad. Reg. 2d 225, 227 n.10 (Com. Car. Bur. 1986). In 1992, however, the Commission revised its procedures for determining cellular service boundaries, and effectively redefined a cell's SAB as being approximately 8 percent larger than its 39 dBu contour. *See Second Report and Order* in CC Docket No. 90-6, 7 FCC Rcd 2449 (1992). Under either standard, we find that PC Cellular has satisfied the threshold requirement of demonstrating that its proposed extension is *de minimis*.

7. We also find that PC Cellular has adequately justified the *de minimis* extension of its SAB into Mo-Tel's RSA. PC Cellular's explanation that the only way it can provide reliable service to the city of Paducah is through the use of an omnidirectional antenna is reasonable, and there is no suggestion that its selection of the antenna was to serve areas beyond its RSA. Rather, the small degree of signal overlap, which includes the population clusters, highways, and portions of the Ohio River, identified by Mo-Tel, stems from the fact that Paducah is located near the irregularly shaped, northern boundary of the Kentucky 1 RSA market, and, thus, is unavoidable.

8. Conversely, we find Mo-Tel's concerns overstated. It opposes PC Cellular's signal overlapping population centers and highways within its RSA, yet it has not indicated that it is providing service at these locations. Furthermore, their potential as sources of revenue does not appear to be sufficiently significant to create a presumption that PC Cellular's intent is to serve them. Smithland and Leadbetter, the two communities identified by Mo-Tel, have respective populations of 384 and 280 people,[4] and two of the highways it cites, routes 70 and 453, are secondary state highways, for which it has provided no traffic counts.[5] Nor has Mo-Tel submitted any quantitative information regarding the vessels plying the six mile stretch of river that it contends PC Cellular's SAB will overlap. It is only for U.S. Highway 60 that Mo-Tel has proffered any data. Mo-Tel argues that PC Cellular's proposal would result in it covering an additional two mile segment of this highway, bringing its total coverage of the highway within Mo-Tel's RSA to 13.5 miles. Mo-Tel calculates the highway's average daily traffic on its affected portions to be in excess of 3,000 vehicles at all measured points and to exceed 7,000, as it approaches the boundary with PC Cellular's RSA. While these figures are not insignificant, we do not find them determinative. *Compare Iowa RSA No. 4 Limited Partnership*, 6 FCC Rcd 2919 (Mobile Serv. Div. 1991). If Mo-Tel wishes to secure exclusive access to this portion of U.S. Highway 60, as well as the other locations it has cited, it need only to expand its CGSA to encompass them. *See First Report and Order, supra*, at 6204. Otherwise, we find that PC Cellular's need to provide adequate service to the city of Paducah outweighs Mo-Tel's desire to prevent the *de minimis* encroachment into its RSA.

III. CONCLUSION

9. In view of the foregoing discussion, we find that the proposed extension is *de minimis* and permissible. We also find PC Cellular fully qualified to effect its proposal and that granting the subject application to make modifications to cellular station KNKN 830 will promote the efficient provision of service to the public and that it will, therefore, be in the public interest.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT the Petition to Deny filed by Mo-Tel Cellular, Inc., in the captioned proceeding, IS DENIED.

11. IT IS FURTHER ORDERED THAT the application (File No. 08825-CL-MP-92) filed by PC Cellular of Kentucky, L.P., IS GRANTED. This authorization, however, does not include the right to any interference protection to any areas beyond the Kentucky 1 - Fulton RSA. Nor does it authorize the facility's SAB to extend into the CGSA of any other operating cellular system on the same channel block without the written consent of any licensee in any affected cellular system.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

[3] Reply to Opposition, filed December 30, 1992, at 3 n.3.
[4] Rand McNally, Commercial Atlas and Marketing Guide 453 (1993).
[5] Rand McNally, Road Atlas 70 (1984).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Expanded Interconnection with Local Telephone Company Facilities	)	CC Docket No. 91-141

SECOND MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: August 3, 1993 Released: September 2, 1993

By the Commission: Commissioner Barrett issuing a separate statement.

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APPENDIX A -- List of Parties

I. INTRODUCTION

1. In September 1992, we adopted an order requiring Tier 1 local exchange carriers (LECs), excluding NECA pool members, to offer expanded interconnection for special access to all interested parties, permitting competitors and high volume users to terminate their own transmission facilities at LEC central offices.[1] Eighteen parties have filed petitions that together request reconsideration of all significant aspects of that decision.[2]

2. In this Order, we reconsider only certain issues that are particularly time-sensitive. In particular, this Order reconsiders the fresh look issues addressed in the Special Access Order, clarifies and expands the Commission's statements about the application of nonrecurring reconfiguration charges, modifies the requirement for tariffing virtual collocation arrangements, and specifies certain standards that must be met for a connection charge rate structure to be considered reasonable. Other issues raised by the petitions for reconsideration will be addressed in a later order.

II. FRESH LOOK

A. Background

3. In the Special Access Order, we noted that the existence of certain long-term special access arrangements raises potential anticompetitive concerns because they tend to "lock up" the access market, preventing customers from obtaining the benefits of the new, more competitive access environment.[3] For that reason, we adopted a limited "fresh look" policy that would cap the charges a LEC may impose on certain customers who want to terminate long-term LEC special access arrangements.

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[1] Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) (Special Access Order), appeal pending sub nom. Bell Atlantic Corp. v. FCC, No. 92-1619 (D.C. Cir., filed November 25, 1992). On December 18, 1992, the Commission released a sua sponte reconsideration order reducing the number of offices at which the LECs must initially implement expanded interconnection. Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, 8 FCC Rcd 127 (1992) (First Reconsideration Order).

[2] Appendix A contains a list of all parties filing petitions for reconsideration, oppositions to those petitions, and replies.

[3] Special Access Order, 7 FCC Rcd at 7463-64, ¶ 201.

4. The fresh look option set out in the Special Access Order applies only to those customers with LEC special access arrangements for terms in excess of three years, entered into on or before the Special Access Order was adopted on September 17, 1992. Fresh look gives these customers an opportunity to terminate long-term arrangements at a specific central office for a period of ninety days beginning when the first expanded interconnection arrangement is operational in that central office. These customers would not be released from all termination liabilities, but termination charges would be limited to the difference between the amount the customer has already paid and any additional charges that the customer would have paid for service under a shorter term offering corresponding to the term actually used, plus interest at the prime rate.[4]

5. Some interexchange carriers (IXCs) and competitive access providers (CAPs) have filed petitions for reconsideration asking that the scope of the fresh look requirement be expanded, while several LECs have filed petitions asking that fresh look be eliminated altogether. Parties also address the fresh look issue in their comments on the Phase I Notice of Proposed Rulemaking on expanded interconnection for switched transport.[5] MFS also filed on March 24, 1993, a Petition for Expedited Decision of "Fresh Look" Issues, asking that the Commission sever the issues pertaining to fresh look from the other issues pending on reconsideration, and issue an expedited decision no later than May 17, 1993 resolving the fresh look issues.

B. Notice Under the Administrative Procedure Act

6. Positions of the Parties. USTA has asserted that the Commission provided no notice that it intended to consider implementing a fresh look option.[6] Other parties do not comment on this issue.

7. Discussion. We find here, as in the Special Access Order, that there was sufficient notice to permit adoption of a fresh look requirement. In the Special Access Order, we stated that "[t]he parties have been on notice, and have had full opportunity to comment, on our intent to examine 'whether to establish new guidelines for review of rate structure responses to

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[4] Special Access Order, 7 FCC Rcd at 7463-65, ¶¶ 201-202. See id. at n.466 for a detailed explanation of the calculation of termination charges under fresh look.

[5] See Expanded Interconnection with Local Telephone Company Facilities, Second Notice of Proposed Rulemaking, 7 FCC Rcd 7740 (1992) (Notice).

[6] USTA Petition at 31-33.

competition, such as volume discounts. . . .'"[7] Term discounts are another mechanism used by established market participants in responding to the development of competition or potential competition, and as such were subject to examination within the scope of this language. Other parties do not specifically focus on the reasoning set forth in the Special Access Order concerning the scope of the notice, and no persuasive arguments for a contrary interpretation have been presented. Given the importance of fresh look to achieving the benefits of expanded interconnection, we conclude that the fresh look policy is a "logical outgrowth" of the Notice.[8]

8. Nevertheless, we recognize the broad scope of the Notice and the large number of issues to be addressed. As a result, parties did not focus on the issue of fresh look in their comments in the special access portion of this proceeding. There is, however, an extensive record on fresh look in the petitions for reconsideration and comments on those petitions, and in the comments on the Phase I Notice of Proposed Rulemaking concerning switched transport. In order to ensure consideration of these issues with the benefit of a more fully developed record, therefore, we now reexamine the fresh look issues de novo.[9]

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[7] Special Access Order, 7 FCC Rcd at 7465, n.468 (citing Expanded Interconnection with Local Telephone Company Facilities, Notice of Proposed Rulemaking and Notice of Inquiry, 6 FCC Rcd 3259, at 3266, ¶ 45 (1991)).

[8] The courts have taken a practical approach to the Administrative Procedure Act's notice and comment requirements. An agency is not required to issue further notices for comment so long as "the final rules represent a 'logical outgrowth' of the proposals" made in the original notice. Action Alliance of Senior Citizens of Philadelphia v. Bowen, 846 F.2d 1449, 1455 (D.C. Cir. 1988) (quoting Small Lead Refiner Phase-Down Task Force v. EPA, 705 F.2d 506 at 547 (D.C. Cir. 1983)). See also Central Lincoln Peoples' Utility District v. Johnson, 735 F.2d 1101, 1118 (9th Cir. 1984)(a final rule must be sufficiently related to proposal); American Transfer & Storage Co. v. ICC, 719 F.2d 1283, 1303 (5th Cir. 1984)("The notice need not specifically identify 'every precise proposal which [the agency] may ultimately adopt as a rule.'"). In evaluating whether a new round of comments is needed, "the task is fundamentally one of balancing the advantages of additional comment -- improvements in the quality of rules, fairness for affected parties, and facilitation of judicial review -- against the burden on 'the public interest in expedition and finality.'" Action Alliance, 846 F.2d at 1455.

[9] In light of our present action on fresh look issues, we deny MFS' petition for expedited action as moot.

C. Reexamination De Novo of Fresh Look Issues

9. On the basis of the record, including filings on reconsideration and on the Phase I Notice of Proposed Rulemaking, we now conclude, as set forth below, that a limited fresh look opportunity is needed in order to give full effect to our expanded interconnection policies. The fresh look opportunity will be limited to customers with LEC special access arrangements for terms of three years or longer, entered into on or before September 17, 1992, the date of adoption of the Special Access Order. The right to end a LEC long-term arrangement under the fresh look policy, either to take service pursuant to an interconnection arrangement or pursuant to a different LEC arrangement, at a specific central office will exist for a period of 180 days from the date of filing of the LEC's tariff transmittal giving public notice of the start of the fresh look period.[10] The LEC must file that tariff transmittal within five business days of the date that the first special access expanded interconnection arrangement is operational in that central office.[11] If a customer chooses to terminate a long-term arrangement pursuant to fresh look, its termination liabilities will be limited as described below. In addition, a second fresh look opportunity will occur when switched transport expanded interconnection becomes operational. This fresh look opportunity will be limited to LEC special access facilities used to transmit both special and switched access traffic.

1. Need for Fresh Look

10. Positions of the Parties. As an initial matter, LECs argue that there is no need for a fresh look requirement. The LECs contend that sophisticated business customers should have been aware of competitive alternatives and of the status of the expanded interconnection proceeding, and therefore do not need this protection.[12] USTA argues that if the Commission does not eliminate fresh look, then it should apply fresh look to CAP pricing plans, as well as LEC pricing plans.[13] MFS states that it would not object to this.[14]

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[10] See ¶ 30, infra.

[11] See ¶ 28, infra, for an explanation of when expanded interconnection is deemed operational.

[12] Rochester Response at 10-12; USTA Petition at 31-33.

[13] USTA Petition at 31-33, Opposition at 8-11. See also Bell Atlantic Phase I Reply Comments at 4.

[14] MFS Reply at 7.

11. ALTS and WilTel, however, assert that competitive alternatives were not available, and that the magnitude of regulatory changes could not have been foreseen, when customers entered into long-term arrangements with the LECs.[15] MFS asserts that the purpose of fresh look is to prevent the LECs from locking up the market through the use of predatory discounts, even though it may well have been prudent for customers to take advantage of those discounts.[16]

12. Discussion. We conclude that there is a need for a limited fresh look option. Our goal in mandating expanded interconnection has been to remove the roadblocks that may have prevented IXCs and their customers from reaping the benefits of access competition. The existence of certain long-term special access arrangements with excessive termination liabilities prevents customers from obtaining the benefits of greater access competition for a significant period. We find that there is a need for a limited fresh look opportunity to allow eligible customers to assess the new alternatives available in a more competitive market.[17]

13. We note that the fresh look policy adopted here takes a carefully balanced approach designed to eliminate unreasonable barriers to competition without unduly interfering with business arrangements between LECs and their customers. For instance, fresh look will apply for a relatively short period, and only to those arrangements that raise the greatest concerns about competition. In addition, termination liabilities are not barred altogether, but are merely limited to levels that we find reasonable under these circumstances. Our fresh look policy accommodates the LECs' need to recover their costs, at the same time that it accommodates the public interest in attaining the benefits of competition more rapidly. We will, however, apply fresh look to LEC customers only. Customers with long-term CAP arrangements clearly had competitive alternatives when they struck those deals, and do not need relief from their long-term obligations in order to be able to benefit from competition.

2. Lawfulness of Fresh Look

14. Positions of the Parties. Some of the LECs argue that fresh look is unlawful, either because it abrogates contracts

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[15] ALTS Reply at 6; WilTel Opposition at 17-18.

[16] See MFS Phase I Reply Comments at 24-25.

[17] Fresh look does not permit a LEC to cancel a long-term arrangement that a customer wishes to continue.

between carriers and their customers, or because it constitutes an unlawful rate prescription.[18]

15. ALTS, CompTel, and MFS argue that the Commission expressly determined in the Special Access Order that continuation of the existing rate structure would be unjust and unreasonable, and prescribed a reasonable approach.[19] Sprint says that the Commission did not find that term discounts are per se unlawful, but that they could have anticompetitive effects by foreclosing the LECs' customers from considering newly available competitive alternatives. Sprint characterizes this finding as tantamount to a finding that term discount plans, in these narrow circumstances, constitute an unreasonable practice under Section 201 of the Communications Act.[20] Sprint also argues that fresh look does not constitute an abrogation of contracts because the relationships in question here are governed by tariffs, not contracts, and the Commission has an unquestioned right to prescribe lawful tariff terms.[21] Ad Hoc, however, argues that fresh look is not a prescription at all, but merely a refusal to enforce contractual penalties.[22]

16. Discussion. We find that adoption of the fresh look policy set forth herein is a lawful exercise of the Commission's authority under Sections 201 through 205 of the Communications Act. First, fresh look does not constitute an unlawful rate prescription. We find that LEC termination charges in excess of those specified herein would, in certain limited circumstances, deprive customers of the benefits of competition and tend to "lock up" the interstate access market if they were allowed to continue. Therefore, we find that the continuation of such termination

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[18] GTE Petition at 12-14, Opposition at 4-5; USTA Petition at 31-33, Opposition at 8-11. See also Cincinnati Bell Phase I Comments at 14-15; USTA Phase I Reply Comments at 28-29. GTE asserts that the Commission has made no findings as to the lawfulness of the LECs' discounts, and therefore has violated Section 205 of the Communications Act by prescribing rates without a proper basis.

[19] ALTS Reply at 5-6; CompTel Comments at 13, n.26; MFS Reply at 7.

[20] Sprint Opposition at 7-8.

[21] Sprint Opposition at 8 ("the Commission has the right to abrogate carrier-customer contracts if it finds such action is required to serve the public interest" (citing Western Union Tel. Co. v. FCC, 815 F.2d 1495, 1501 (D.C. Cir. 1987) and United Gas Co. v. Mobile Gas Corp., 350 U.S. 332, 344 (1956))).

[22] Ad Hoc Opposition at 11-13.

provisions without the modifications specified in this Order would be unjust and unreasonable in violation of the Communications Act. Accordingly, we prescribe the termination provisions described herein, including the maximum just and reasonable charges for the customers specified.[23]

17. With respect to the argument that fresh look constitutes an unlawful abrogation of contracts, we note first that access charges are governed by tariffs rather than by individual contracts.[24] The Commission has clear authority under Section 205 to prescribe just and reasonable maximum charges where we find, as we do here, that existing charges would violate the Communications Act if continued. Even to the extent that long-term arrangements may reflect carrier-to-carrier contracts, the Commission has authority to abrogate such contracts where it finds that they are contrary to the public interest, as we do here.[25]

3. Fresh Look Requirements

a. Agreements Subject to Fresh Look

18. Positions of the Parties. ALTS argues that fresh look should apply to all contracts executed up until the time that an operational collocation arrangement has been established in a

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[23] Sections 201 through 205 of the Communications Act empower the Commission to prescribe just and reasonable charges for tariffed LEC offerings, including termination charge provisions. The Commission has adopted similar fresh look requirements in the past. See Competition in the Interstate Interexchange Marketplace, Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 2677, 2681-82 (1992) (fresh look in context of 800 bundling with interexchange offerings). See also Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 4582, 4583-84 (1991) (fresh look requirements imposed as condition of grant of Title III license).

[24] Part 69 of the Commission's rules requires that "charges for [interstate] access service shall be computed, assessed and collected . . . as provided in this Part." 47 C.F.R. § 69.1. The Commission adopted an access charge structure in 1983 that was intended to replace the existing compensation mechanism with a tariffed access charge framework. MTS and WATS Market Structure, Phase I, Third Report and Order, 93 FCC2d 214 (1983).

[25] See Western Union Tel. Co. v. FCC, 815 F.2d 1495, 1501 (D.C. Cir. 1987)("the Commission has the power to prescribe a change in contract rates when it finds them to be unlawful . . . and to modify other provisions of private contracts when necessary to serve the public interest.")

central office, because customers have no competitive alternatives until that time.[26] USTA, though, says that fresh look should apply only to agreements entered into before the MFS petition was filed in November 1989,[27] arguing that large sophisticated business customers should have anticipated expanded interconnection in negotiating long-term arrangements after that date.[28]

19. A number of IXCs and CAPs also argue that fresh look should apply to arrangements of as short as one year.[29] Some parties assert that excluding three-year arrangements from fresh look, as the Special Access Order did,[30] eliminates the majority of special access term arrangements and effectively limits fresh look to five year arrangements, since the LECs generally do not offer arrangements of more than three but less than five years. CompTel says that long-distance competition will be adversely affected if some customers are forced to take service under their current long-term arrangements "at rates considerably above those available in a newly competitive marketplace."[31]

20. MFS argues that the relevant factor is not the initial term of the agreement, but how long it would remain in place after the implementation of expanded interconnection. MFS would therefore apply fresh look to long-term arrangements that would expire under their own terms more than one year after the start of the fresh look period.[32]

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[26] ALTS Petition at 9-10.

[27] See Metropolitan Fiber Systems Petition for Rulemaking (November 14, 1989)(requesting, among other things, that the Commission develop rules providing CAPs with interconnection to LEC networks on reasonable and nondiscriminatory terms through the unbundling of special access tariffs.)

[28] USTA Opposition at 8-11.

[29] CompTel Comments at 15 (long-term arrangements of one year or longer); ALTS Petition at 8-9 and WilTel Opposition at 20 (arrangements in excess of one year); Teleport Petition at 14 (include three year agreements); MFS Petition at 8 (arrangements that would expire more than one year after the start of fresh look). See also MFS Phase I Comments at 13-16; Teleport Phase I Comments at 5.

[30] The Special Access Order applied fresh look only to arrangements in excess of three years.

[31] CompTel Comments at 15.

[32] MFS Petition at 8; see also Sprint Opposition at 9.

21. Discussion. We conclude that only arrangements for terms of three years or longer, entered into on or before September 17, 1992, should be eligible for the fresh look option. This will limit fresh look to situations where excessive termination liabilities would affect competition for a significant period of time. At the same time, this approach recognizes that customers entering into long-term arrangements after the adoption of the Special Access Order should have been aware of the impending competitive developments. The IXCs and large business customers that typically purchase access can reasonably be expected to have been aware of the pro-competitive effects of expanded interconnection once the Special Access Order was adopted, particularly in view of the widespread publicity accompanying that decision. We do not accept USTA's assertion that fresh look should apply only to agreements entered into before the November 1989 MFS petition was filed. It would be unreasonable to expect customers to have anticipated the significance of expanded interconnection for access competition at that point, when only a proposal by a private party had been made.

22. As previously stated, we also conclude that the fresh look requirement should apply to arrangements with a term of three years or longer. Limiting fresh look to arrangements in excess of three years, as the Special Access Order did, would unreasonably restrict fresh look opportunities. This formulation would effectively limit fresh look to five year arrangements, since LECs typically do not offer terms between three and five years. At the same time, application of fresh look to arrangements with terms of less than three years is not necessary to achieve our goals. Agreements of such short duration, if entered into on or before September 17, 1992, would expire within a reasonable period after the implementation of expanded interconnection, and thus would not greatly restrict customers' ability to take advantage of new competitive alternatives.

23. We do not adopt MFS' approach of applying fresh look on the basis of how long an arrangement would remain in place after expanded interconnection is implemented. This approach raises concerns that by delaying the implementation date for expanded interconnection in particular offices, LECs could cause some long-term arrangements to be excluded from fresh look because they would then expire too soon after the expanded interconnection implementation date.

b. The Fresh Look Period

24. Positions of the Parties. ALTS argues that the fresh look period should be triggered only by collocation by a CAP, not by an IXC or end user, because only then do other LEC customers

have a competitive alternative available.[33] To accommodate IXCs and end users that establish collocation arrangements before a CAP does so, ALTS suggests that the Commission could establish a customer-specific fresh look period. GTE, however, argues that fresh look should start with the first operational collocation arrangement, regardless who the interconnector is.[34] ALTS also asks the Commission to eliminate uncertainty about the start date of fresh look by identifying the date the LEC issues its first bill for recurring cross-connect charges as the date on which the collocation arrangement is operational, triggering fresh look.[35]

25. With respect to the closing date of the fresh look period, Ameritech argues that ninety days is sufficient to allow customers to terminate their contracts with the LECs.[36] Some CAPs and IXCs, however, argue that more than ninety days is needed to accommodate the complex movement of access arrangements from one carrier to another.[37] ALTS contends that a nine month fresh look period is needed because LECs typically require two to six months to complete the construction and testing necessary to provide service over a collocation arrangement. According to ALTS, the previously adopted fresh look period will be triggered by a single interconnector, and will expire before most other interconnectors could complete construction and testing.[38] WilTel also supports a nine month fresh look period, saying that IXCs can only assess their competitive options after the access provider is interconnected and fully operational.[39] MFS asserts that ninety days is a reasonable period only if the Commission can guarantee

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[33] ALTS Petition at 6; see also WilTel Opposition at 19.

[34] GTE Reply at 3-4.

[35] ALTS Petition at 4, n.8.

[36] Ameritech Opposition at 6.

[37] CompTel Comments at 13-14; MFS Petition at 8-9; ALTS Petition at 4-5; WilTel Opposition at 19.

[38] ALTS Petition at 4-5, Reply at 8. ALTS proposes a series of customer-specific fresh look periods until a CAP has taken expanded interconnection. That is, any IXC or end user that takes expanded interconnection would have a fresh look opportunity at that time. Such customer-specific fresh look periods would be eliminated once collocation by a CAP triggered the general fresh look period.

[39] WilTel Opposition at 19.

that all "predatory and anticompetitive" discounts will be eliminated before the ninety-day period begins.[40]

26. Finally, a number of CAPs and IXCs ask the Commission to clarify that giving notice during the fresh look period is all that is necessary for a customer to terminate service under the fresh look option.[41] MFS says that this is necessary because the LEC has the power to delay the actual conversions until the fresh look period has expired.[42] Teleport contends that ninety days is not long enough for customers to actually switch substantial amounts of high capacity service to another carrier.[43]

27. A number of CAPs also argue that the LECs should be required to give public notice of collocation requests in each central office, so that parties would be aware that the fresh look period would soon be triggered.[44] They argue that, absent such notice, the first party to achieve operational collocation will be able to take exclusive advantage of the fresh look period while other requests for expanded interconnection are being processed. Ameritech argues that there is no reason to impose this administrative burden on the LECs, and asserts that the Commission should not encourage the development of any mechanism that will allow CAPs to monitor the interconnection locations chosen by their competitors.[45]

28. Discussion. The fresh look period will be triggered when the first expanded interconnection arrangement is operational in a particular central office or other location.[46] Expanded interconnection is deemed operational when an interconnector takes

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[40] MFS Petition at 8-9.

[41] ALTS Petition at 5, n.5; CompTel Comments at 14; MFS Petition at 8-9; Sprint Opposition at 9; Teleport Petition at 14.

[42] MFS Petition at 8-9.

[43] Teleport Petition at 14.

[44] ALTS Petition at 7; MFS Reply at 9; see also Teleport Reply at 4-5.

[45] Ameritech Opposition at 6.

[46] The fresh look period is triggered on an office-by-office basis. As set forth in ¶ 30, infra, the fresh look period begins to run only when the LEC gives public notice that fresh look has been triggered.

the special access expanded interconnection cross-connect element.[47] The fresh look option will then be available for a period of 180 days.

29. With regard to what triggers the fresh look period, we recognize the concerns of some parties that when the first interconnector is an IXC or an end user, rather than a CAP, other access customers will not yet have a range of competitive alternatives available when the fresh look period begins to run. We believe, however, that a 180-day fresh look period, combined with a requirement that LECs give public notice of the start of the fresh look period, will mitigate this concern by allowing more opportunity for other interconnectors to set up their own expanded interconnection arrangements.[48] Moreover, even where no CAP is providing service, an IXC or end user will have the option of interconnecting directly with the LEC if it wants to take advantage of the fresh look period. The approach taken here will be less administratively burdensome than ALTS' proposal for multiple customer-specific fresh look periods until the first interconnection by a CAP.[49] Thus, the fresh look period for each LEC location will be triggered by any operational special access expanded interconnection arrangement.

30. We also require that LECs provide public notice of the initiation of the fresh look period in each central office or location. Such notice is necessary to provide both customers eligible for fresh look and potential interconnectors with a mechanism for learning about the timing of the fresh look periods. LECs are required to file with the Commission, within five business

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[47] The cross-connect element generally covers the short cable connection between the LEC distribution frame and the central office electronic equipment owned by, or dedicated to, the interconnector.

[48] This is a longer fresh look period than the Commission allowed in the 800 number portability context. See Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, 5906 (1991), aff'd on recon., 7 FCC Rcd 2677, 2681-82 (1992). The circumstances presented here, however, warrant the longer period. In the case of 800 numbers, portability took effect for all parties on the same date. In this context, though, expanded interconnection will proceed interconnector by interconnector over a period of time. Thus, a ninety day period is not likely to be sufficient to allow an opportunity for more than one interconnector to offer service during the fresh look period. Expansion of the fresh look period to 180 days here will allow for more competitive alternatives for customers exercising their fresh look options.

[49] See ALTS Petition at 6.

days of the date on which the first expanded interconnection arrangement becomes operational in an office or other location, a tariff transmittal stating that the fresh look period will begin to run as of the date that such notice is filed with the Commission.

31. Finally, if the customer gives notice during the 180 day period that it intends to terminate its arrangement with the LEC in order to take service from an interconnector,[50] the customer is entitled to application of a fresh look limit on termination charges, even if it does not actually terminate service under the long-term arrangement with the LEC until after the 180 day period has expired. The LEC has some control over when an interconnection will be operational, and thus whether a customer can switch its service to the interconnector, during the fresh look period.[51] Allowing the customer to exercise its option by giving notice will prevent any delays on the part of the LEC from defeating the customer's fresh look rights. The interconnector that the customer intends to take service from, however, must make a request for interconnection during the fresh look period. In addition, the customer must actually terminate service under its arrangement with the LEC within ninety days after the interconnection arrangement is operational in order to be eligible for the fresh look limitation on termination charges. This requirement will prevent unreasonable delays on the part of the customer.

c. Additional Fresh Look Periods

32. Positions of the Parties. Some CAPs and IXCs advocate a fresh look period after expanded interconnection for transport is implemented. These parties assert that the fresh look opportunity is not meaningful when LEC special access services are used to carry both special and switched access traffic.[52] Sprint and CompTel argue that if material changes in the Commission's expanded interconnection policies are made on reconsideration, a new fresh look period will be needed, since those changes may

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[50] The customer may, of course, give notice that it intends to interconnect directly with the LEC under our expanded interconnection regulations.

[51] By contrast, in the context of 800 service, number portability was achieved for all carriers and customers on a single specified date, and there was no technical barrier to actually terminating service during the fresh look period.

[52] ALTS Petition at 3 n.3; Sprint Petition at 12-13; Teleport Petition at 13-14; see also CompTel Comments at 13-14; WilTel Opposition at 20; MFS Phase I Comments at 13-16; Teleport Phase I Comments at 5; Teleport Denver Phase I Reply Comments at 3-5.

affect the attractiveness of competitive alternatives.[53] Finally, MFS says that if fresh look is not delayed until the Commission has prescribed reasonable limits on LEC volume and term discounts, then there should be an additional fresh look period at that time.[54]

33. Most LECs are opposed to any additional fresh look period.[55] NYNEX, though, states that a limited extension of fresh look may be appropriate where switched traffic is carried over special access facilities.[56]

34. Discussion. We agree that an additional fresh look period for certain customers' mixed use facilities should be implemented once expanded interconnection for transport becomes operational. Many high volume telecommunications users combine switched and special access traffic on the same facilities. These mixed use customers would be unable to take advantage of expanded interconnection for switched transport unless they can at the same time terminate their long-term commitments for the special access facilities that carry mixed traffic.[57] If the fresh look window for special access has already closed when expanded interconnection for transport is implemented, they will not be able to do that.[58] A

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[53] CompTel Comments at 13-14; Sprint Petition at 12-13.

[54] MFS Petition at 8-9. See also MFS Phase I Comments at 13-16. In the Special Access Order, the Commission directed the Chief, Common Carrier Bureau, to require the submission of cost support data for some of the largest existing LEC special access discounts. 7 FCC Rcd at 7463, ¶ 200.

[55] Bell Atlantic Phase I Reply Comments at 3-4; BellSouth Phase I Reply Comments at 9-11; Cincinnati Bell Phase I Comments at 14-15; USTA Phase I Reply Comments at 28-29; US West Phase I Reply Comments at 2.

[56] NYNEX Phase I Reply Comments at 13-15.

[57] Otherwise, if a customer is routing switched traffic over a mixed use facility pursuant to a high volume, long-term agreement for special access facilities, it would still be bound by that agreement, but would no longer have the overall traffic volumes to make efficient use of the facilities.

[58] It is unlikely that such customers would terminate their special access arrangements during the earlier fresh look period for special access. Currently, interconnectors are generally banned from "ratcheting," or carrying interstate switched transport traffic on interconnected facilities. See Special Access Order, 7 FCC Rcd at 7420, ¶ 109. Thus, mixed use customers cannot put their switched transport traffic onto interconnected facilities until the ban on ratcheting is removed. That prohibition will not

second fresh look window would permit these mixed use customers the opportunity to take advantage of the new competitive environment by economically moving all of their traffic currently on LEC mixed use facilities at the same time. Thus, a further fresh look period that takes effect when expanded interconnection for transport is implemented is necessary to allow customers to benefit more fully from the new competitive interstate access environment.

35. We therefore establish a further fresh look period for mixed use facilities when the first switched transport expanded interconnection arrangement becomes operational in a central office.[59] So that this additional fresh look period will be closely tailored to address the concerns set forth above, it will apply only to LEC mixed use circuits covered by arrangements of three years or more, entered into on or before September 17, 1992, when the Special Access Order and Phase I Notice were adopted. This further fresh look period will be subject to the same terms as the fresh look period triggered when expanded interconnection for special access becomes operational.[60]

36. The full range of the transport pricing flexibility, particularly volume and term discounts, that we are granting the LECs in our companion order on expanded interconnection for switched transport will, in many instances, not have become effective on the date that the further fresh look period begins in the first offices. We do not believe that this will significantly diminish the competitive alternatives available during the fresh

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be lifted until expanded interconnection for switched transport is implemented. See Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order, FCC 93-379, adopted August 3, 1993.

[59] As with special access expanded interconnection, switched transport expanded interconnection is deemed operational when an interconnector takes the switched transport expanded interconnection cross-connect element.

[60] This fresh look period will not apply to agreements entered into after the adoption of the Special Access Order. In almost all cases, access customers are IXCs or large business customers who can be expected to track developments in the access marketplace. Such customers entering into long-term agreements after the Special Access Order and Phase I NPRM should have been aware of the developing competitive environment.

look period, particularly in light of the fact that the fresh look period will be 180 days long.[61]

37. We do not establish additional fresh look opportunities to take place after all petitions for reconsideration have been ruled on, or after our informal inquiry into LEC volume discounts has been completed, as some parties request. The potential need for such a further fresh look opportunity is entirely speculative at this time.

d. Termination Liabilities

38. Positions of the Parties. A number of CAPs and IXCs argue that the fresh look policy should prohibit the LECs from assessing any termination liabilities at all.[62] Some parties argue that the Commission has not allowed for any such liabilities in implementing previous fresh look policies, and has not demonstrated any basis for adopting a different approach here.[63] Parties also argue that the existence of any termination liability deters customers from exercising a free competitive choice.[64] MFS's view is that "the purpose of a 'fresh look' should be to allow customers a free choice of new service arrangements after the existing tariffs under which they take service have been found unreasonable or unlawful, and replaced by reasonable rates." MFS asserts that in such instances, it would not be reasonable to hold customers to their long-term commitments or to require them to pay any penalty to terminate service "where they were originally induced to subscribe to the service by an unlawful discount offer."[65] Teleport challenges the LECs' need to recover their investments through

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[61] In order to address potential problems, however, we delegate to the Chief, Common Carrier Bureau authority to act on requests for modification of the starting date of the additional fresh look opportunity. It is our intention that such modifications be made only if the petitioner clearly demonstrates that the change is necessary to avoid substantial market dislocations.

[62] ALTS Petition at 3-4, Reply at 7; CompTel Comments at 14-15; MFS Petition at 9-10; Teleport Petition at 13; WilTel Petition at 13-14. See also MFS Phase I Comments at 13-16; Teleport Phase I Comments at 5.

[63] ALTS Petition at 3-4, Reply at 7; CompTel Comments at 14-15; Teleport Petition at 13.

[64] ALTS Petition at 3-4, Reply at 7; CompTel Comments at 14-15; Teleport Petition at 13; WilTel Petition at 13-14.

[65] MFS Petition at 9-10. See also MFS Phase I Comments at 13-16.

termination charges.[66] WilTel contends that the termination charge should be limited to the lesser of (1) the termination charge stated in the tariff; (2) the charge allowed by the Special Access Order; or (3) ten percent of the remaining monthly payments.[67]

39. The LECs, though, defend the application of termination charges. They say that term rates recover the fixed costs of providing service over the life of the term, and that termination liabilities recover those fixed costs if the customer terminates early.[68] LECs also argue that eliminating all termination liabilities would require other ratepayers to subsidize those who choose to terminate their arrangements early.[69]

40. Discussion. We will not require the LECs to eliminate all termination liabilities under fresh look, but will require that such liabilities be limited as follows. Notwithstanding any termination charges provided for in the applicable LEC tariffs, when fresh look applies, the LEC may not charge more than the difference between (1) the amount the customer has already paid and (2) any additional charges that the customer would have paid for service if the customer had originally taken a shorter term arrangement corresponding to the term actually used,[70] plus interest to be calculated at the IRS rate for tax refunds, compounded

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[66] Teleport Reply at 5.

[67] WilTel Petition at 14, n.25.

[68] Bell Atlantic Opposition at 4; USTA Opposition at 8-11.

[69] Bell Atlantic Opposition at 4; USTA Opposition at 8-11. See also NYNEX Phase I Reply Comments at 13-15.

[70] For example, suppose a customer purchased DS1 services from a LEC for a five year term at $12,000 per year per channel, and then after three years of the term had passed, competitive interconnected services became available. Suppose that the LEC would have charged $15,000 per year for the same services for a three year term. In this case, the termination liability under fresh look would be limited to the difference between what the customer would have paid under the shorter term ($15,000 x 3 years = $45,000) and what the customer actually paid ($12,000 x 3 years = $36,000). Thus, the LEC could not charge the customer more than $9,000 ($45,000 - $36,000) plus interest. If the actual term of service taken does not coincide exactly with a service term offered by the LEC, the charges for the service used are to be calculated at the rates applicable at the time the service term began, for the longest term commitment that the customer would have completed. The charge for the period beyond that term is to be calculated pro rata at the rates applicable to the completed term.

daily.[71] This procedure is designed to put both the LEC and the customer in the same position they would have been in if the customer had originally chosen a shorter-term arrangement.

41. Although in certain other circumstances we have adopted fresh look policies that prohibited any termination charges, we find in this instance that the maximum termination liabilities permitted here more reasonably balance the interests of both the LECs and their customers. Customers will be able to benefit sooner from the competition generated by our expanded interconnection policies without placing an unreasonable burden on the LECs, since the LECs will obtain the compensation appropriate for the term actually taken by the customer.[72] We also note that LECs are free to offer reduced termination charges to all customers, including customers that want to enter into new arrangements with the LEC, so long as they do not discriminate on the basis of whether the customer will take service from the LEC or an interconnector in the future.

III. NONRECURRING RECONFIGURATION CHARGES

42. LECs typically impose a nonrecurring charge on customers that reconfigure or rearrange their special access services. For instance, a nonrecurring charge might apply if a customer converted from several LEC-provided DS1s to a single LEC-provided DS3. A different, and generally higher, reconfiguration charge typically applies when the reconfiguration involves a change in the point of circuit termination. A shift from LEC facilities to collocated interconnector facilities involves such a change in the point of termination of the facilities provided by the LEC.

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[71] See Competitive Telecommunications Association v. The Chesapeake and Potomac Telephone Companies, 8 FCC Rcd 1224 (1993) (including a listing of IRS rates) and Competitive Telecommunications Association v. The Chesapeake and Potomac Telephone Companies, Memorandum Opinion and Order, FCC 93-343 (released July 30, 1993). Interest rates are to be adjusted to reflect changes in the IRS interest rate and will apply to the balances due under the recalculation as they would have accrued over time.

[72] In some cases, LECs may currently have termination liabilities that are below the maximum allowed under fresh look. For instance, ALTS and Teleport state that many LECs already have termination charges that fall below the maximum specified by fresh look policy adopted in the Special Access Order. See ALTS Petition at 3-4; Teleport Petition at 12. Our fresh look policy would not affect such LECs. This order only sets the maximum termination liabilities that may be imposed, and is not intended to increase any termination liabilities that may be below this level.

43. In the Special Access Order, we responded to arguments that LECs apply discriminatory nonrecurring charges when customers terminate the use of LEC circuits and move the traffic to CAP facilities.[73] We required that LECs apply nonrecurring reconfiguration charges in a neutral manner that does not differentiate based on whether the customer chooses to use interconnector or LEC facilities for special access service unless there are specific, identifiable cost differences.[74] We recognized that, absent even-handed treatment, nonrecurring reconfiguration charges could constitute a serious barrier to competitive entry.

44. Positions of the Parties. Some CAPs and IXCs argue that LECs should not be permitted to impose any nonrecurring reconfiguration charges when customers rearrange their service to use an interconnector's offerings, because the charges dissuade customers from choosing competitive services.[75] MFS argues that allowing LECs to impose such charges nullifies the fresh look policy.[76] MCI urges the Commission to mandate a six month waiver of nonrecurring charges analogous to the waiver mandated in the Transport Order.[77] Teleport urges the Commission to adopt the principle that it should cost an IXC no more to switch access carriers than to stay with the LEC. Teleport also asserts that the problem of nonrecurring charges is exacerbated by the fact that LECs have at times waived reconfiguration charges for their own customers, but not for CAP customers.

45. The LECs oppose a mandated waiver of reconfiguration charges, arguing that the nonrecurring charges recover legitimate costs that cannot be recovered through recurring charges in the

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[73] See Special Access Order, 7 FCC Rcd at 7462, ¶ 198.

[74] Special Access Order, 7 FCC Rcd at 7465, ¶ 203.

[75] MCI Petition at 11-13; MFS Reply at 9. See also MFS Phase I Comments at 16; Teleport Phase I Comments at 2-4, Phase I Reply Comments at 4.

[76] MFS Reply at 9.

[77] MCI Petition at 11-13. In the Transport Order, we required the LECs to waive certain nonrecurring charges until approximately six months after the implementation of the interim transport rate structure. This was done in order to encourage IXCs to reconfigure their networks to make them more efficient and to reduce the expense of network reconfigurations induced by the change in the transport rate structure mandated by the Commission in that Order. Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006, 7038, ¶ 60 (1992) (Transport Order), recon., FCC 93-366 (released July 21, 1993), recon., FCC 93-403 (released August 18, 1993).

case of customers no longer purchasing access from the LEC.[78] The only other alternative, they say, is to recover these costs through a subsidy from other ratepayers to those customers who caused the costs. LECs contend that a service reconfiguration that involves a change in the point of termination, as occurs when a customer shifts to CAP services, is significantly more expensive than a reconfiguration that involves no changes in circuit termination points, because of the engineering and redesign of circuits, reconstruction of engineering records, and billing changes not involved in simpler reconfigurations. LECs also reject MCI's Transport Order analogy, noting that the LECs are repricing their transport services, and that customers could face rate increases if they do not reconfigure their services.

46. NYNEX asks the Commission to confirm that the differences in nonrecurring charges in NYNEX's tariffs are in accord with Commission rules. NYNEX states that it currently does not apply nonrecurring charges for service rearrangements from its DS1 to DS3 services, but does apply charges for rearrangements from NYNEX high capacity services to a collocated interconnection cage.[79] NYNEX states that it eliminated DS1-to-DS3 reconfiguration charges to encourage customers to upgrade their services to more efficient fiber-based offerings, and that the costs of such rollovers are now recovered through recurring charges. NYNEX argues that it would be competitively disadvantaged if it were forced to recover costs from its own customers through nonrecurring charges, because spreading the costs over time through recurring charges may be more attractive to customers. NYNEX asserts that the costs of rerouting service to a collocated cage, however, cannot be recovered through recurring charges, because the customer has discontinued service and is no longer paying recurring charges.

47. Discussion. We will not prohibit the imposition of nonrecurring reconfiguration charges, as some CAPs and IXCs request, because this would ignore the legitimate costs that the LEC incurs in making service changes. Interconnectors and their customers should generally pay for the costs incurred by the LEC in providing service to them. At the same time, however, it is important to ensure both that the level of the nonrecurring charges paid by interconnectors' customers, and the difference between those charges and the charges paid by LEC customers, reflect LEC costs.

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[78] NYNEX Opposition at 6-7; Ameritech Opposition at 7-8; United Opposition at 12-13. See also Bell Atlantic Phase I Reply Comments at 4-5; NYNEX Phase I Reply Comments at 15-16; PacTel Phase I Reply Comments at 34-38; SW Bell Phase I Reply Comments at 21-22; USTA Phase I Reply Comments at 32-33.

[79] NYNEX Petition at 6-7.

48. We do, however, expand upon the requirement that any nonrecurring charges are to be applied in a neutral manner. First, in order to ensure just, reasonable, and nondiscriminatory rates, all nonrecurring charges applicable to customers shifting to an interconnector's services are to be set no higher than cost-based levels.[80] In addition, the difference between the charges applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service with the LEC must be cost-based. Thus, if a LEC waives nonrecurring reconfiguration charges for LEC special access or transport services, it must not charge customers who reconfigure in order to take service pursuant to an expanded interconnection arrangement more than an amount reflecting the difference between the costs of the two different types of reconfigurations.

49. In order to implement these principles, we make the following change in the application of our price cap rules. For those nonrecurring charges that apply to the reconfiguration or rearrangement of special access services, the presumption of lawfulness generally accorded to within-band, within-cap rates under our price cap rules will not apply.[81] This modification will permit us a greater ability to review the reasonableness of, and any differential between, the charges assessed on customers reconfiguring their service with the LEC and those taking advantage of service using an expanded interconnection arrangement.

50. We find that, in light of newly developing access competition, the continued application of nonrecurring reconfiguration charges that do not satisfy the principles set forth herein would be unjust and unreasonable, in violation of the Communications Act. The continued application of such nonrecurring charges would deprive customers of the benefits of competition. Accordingly, we prescribe the standards for calculating maximum nonrecurring charges described herein. Section 205 of the Communications Act empowers the Commission to adopt rules and regulations concerning the reasonableness of tariffed LEC offerings. Parties have been on notice of, and have had full

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[80] Such charges are to reflect only the costs incurred for the particular type of reconfiguration being implemented. Thus, for instance, we would expect customers whose circuits are merely being rerouted within a central office to terminate at a collocated cage to pay a lower nonrecurring charge than customers requiring construction of new facilities to a relocated point-of-presence.

[81] See Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, ¶¶ 290-295 (1990). recon. 6 FCC Rcd 2637 (1991), further recon., 6 FCC Rcd 4524 (1991), second further recon., 7 FCC Rcd 5235 (1992), aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

opportunity to comment on, this issue. In the Notice, the Commission asked interested parties to address the issue of whether changes in the current special access rate structure for nonrecurring charges were necessary.[82] In addition, we indicated our intent to examine "whether to establish new guidelines for review of rate structure responses to competition."[83] The differential application of nonrecurring charges is one way in which LECs could respond to competition. The LECs are to file tariff revisions implementing these standards as soon as possible, but in no event later than October 18, 1993.[84]

51. NYNEX requests that we confirm that the differences in nonrecurring charges in its tariffs are in accord with Commission rules. It appears that NYNEX's tariffs, as described in the NYNEX Petition, would violate the standards set forth above. We will only consider requests for waiver of those requirements if a LEC can demonstrate that any differential treatment would not undermine competition or otherwise violate the Communications Act.

IV. VIRTUAL COLLOCATION

52. In the Special Access Order, we required LECs to make virtual collocation generally available in their tariffs throughout any study area in which they had negotiated an individual virtual collocation arrangement with an interconnector or provided intrastate virtual collocation.[85] In the Special Access First Reconsideration Order, we narrowed the scope of that requirement to require that virtual collocation be tariffed initially only in the subset of LEC facilities designated for implementation of expanded interconnection.[86]

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[82] Notice, 6 FCC Rcd 3259, at 3263 n.27 (1991).

[83] Id. at 3266, ¶ 45.

[84] This tariff filing date is subject to the Commission obtaining expedited approval from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act, 44 U.S.C. §§ 3501, et seq.

[85] Special Access Order, 7 FCC Rcd at 7490, ¶ 259. We also specified that any individually negotiated virtual collocation arrangements are to be made available to all interested parties throughout the study area. Id. at n.605. When a LEC offers an intrastate virtual collocation arrangement, the terms of its interstate virtual collocation tariff may differ from the intrastate arrangement. Id. at 7490, ¶ 259.

[86] Special Access First Reconsideration Order, 8 FCC Rcd at 128-29, ¶¶ 7-18. The subset-wide virtual collocation tariffing rule operates independently of the requirement that a LEC file a

53. Positions of the Parties. Several LECs request that we limit the tariffing requirement for individually-negotiated virtual collocation arrangements to individual central offices, rather than applying it to the full subset of offices where expanded interconnection is being implemented.[87] MFS agrees that the subset-wide requirement is not necessary, provided that LECs are required to make the same terms and conditions available to all interconnectors at the same location on a nondiscriminatory basis.[88]

54. GTE, USTA, and United argue that the current rule for individually negotiated virtual collocation arrangements ignores the specific needs of interconnectors, differences in markets, and unique characteristics of LEC offices.[89] They also argue that the rule will discourage LECs from entering customized arrangements and will deter innovation.[90] PacTel asserts that the requirement would "conflict with the intent of the Commission to establish physical collocation as the primary form of expanded interconnection."[91] USTA contends that when a LEC has an intrastate virtual collocation arrangement, it could be forced to extend its interstate offering throughout the study area even though the intrastate arrangement

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general virtual collocation tariff for offices where it receives an exemption from the physical collocation requirement based on lack of physical space or a qualifying state regulatory decision. See Special Access Order, 7 FCC Rcd at 7390-91, ¶ 41.

[87] GTE Petition at 34-35, Phase I Comments at 30-31; USTA Petition at 16-18, Phase I Comments at 26-27; United Petition at 8-9, Phase I Comments at 6-7; PacTel Phase I Comments at 44-45. Compare Rochester Petition at 10-11.

[88] MFS Opposition at 21-22.

[89] GTE Petition at 34-35, Phase I Comments at 31; USTA Petition at 16-18, Phase I Comments at 26-27; United Petition at 8-9, Phase I Comments at 6-7.

[90] GTE Petition at 34-35, Phase I Comments at 30-31; USTA Petition at 16-18, Phase I Comments at 26-27; United Phase I Comments at 6-7.

[91] PacTel Phase I Comments at 45. According to PacTel, under this rule, LECs would have to provide both physical and virtual collocation in central offices where no exemption applies and virtual collocation in all others, once the LEC has provided one intrastate or interstate virtual collocation arrangement. Id. at 44-45. PacTel also argues that rather than requiring generally available tariffs, the Commission should limit required tariffing of virtual collocation to the same central office involved or offices covered by bona fide requests. Id. at 45.

is limited to the areas that the state believes best serve the public interest.[92] USTA also argues that when a LEC has to provide virtual collocation because space for physical is exhausted, the virtual offering "could trigger mandatory virtual collocation in every other central office, even though that option may not be preferred by anyone, and even though physical space may be available in the other central offices."[93]

55. CompTel and MCI, however, favor maintaining the subset-wide tariffing requirement. CompTel generally argues that virtual collocation should be required everywhere that physical collocation is required and contends that there is substantial danger that the LECs will negotiate special arrangements with AT&T.[94] CompTel suggests that to "guard against such discrimination, the Commission should require that virtual collocation arrangements be provided under generally available tariffs."[95] MCI urges us to deny the requests of USTA and GTE, arguing that the current rule is "reasonably designed to assure the widespread availability of virtual collocation on non-discriminatory terms."[96]

56. Discussion. On reconsideration, we conclude that if a LEC negotiates an individual interstate special access virtual collocation arrangement with an interconnector, it need not make that virtual collocation arrangement generally available in the full subset of LEC locations designated for collocation in the study area. Instead, the LEC only must make the arrangement available to other parties in the actual LEC location involved. In addition, if a LEC offers an intrastate virtual collocation arrangement,[97] it need not file an interstate tariff offering virtual collocation in the full subset of LEC locations designated for collocation in the study area. Instead, it can offer virtual

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[92] USTA Petition at 17.

[93] Id. at 17-18.

[94] CompTel Comments at 2; CompTel Phase I Comments at 9 n.17; CompTel Ex Parte Letter from Jeffrey S. Linder to William F. Caton (July 23, 1993) at 1.

[95] CompTel Comments at 9 n.17.

[96] MCI Phase I Reply Comments at 21.

[97] Such intrastate arrangements could include, for example, those (1) offered purely voluntarily; (2) offered pursuant to a state experimental policy; or (3) offered pursuant to a state policy adopted after the February 16, 1993 deadline established in the Special Access Order for state policies to qualify for an exemption.

collocation but rather only in the actual LEC locations in which it offered the intrastate arrangement.

57. These virtual collocation requirements do not affect the obligation of a LEC to tariff interstate virtual collocation where it has been granted an exemption from the physical collocation tariffing requirement.[98] Therefore, when a LEC has been granted a space exemption in a specific location, the LEC must file a virtual collocation tariff for that location. In addition, a LEC that has been granted an exemption based on state action must file an interstate virtual collocation tariff for special access covering all of the exempt LEC locations in the subset of offices designated for collocation. Thus, this rule does not apply to virtual collocation offerings made in lieu of physical collocation under the exemptions for lack of space or state action. As a result, in the case of a LEC central office covered by the state exemption where the LEC also has a separate individually negotiated special access virtual collocation arrangement, the LEC must file a general interstate virtual collocation tariff pursuant to the state exemption, as well as tariff the individually negotiated virtual collocation arrangement.

58. In the Special Access Order, we concluded that physical collocation is to be the primary form of collocation for expanded interconnection, but noted that parties remain free to negotiate virtual collocation arrangements. We concluded that such an approach "encourages the parties . . . to adapt their arrangements as necessary to reflect differing physical and technical conditions."[99] While we would encourage the LECs to make negotiated virtual collocation arrangements as widely available as possible, we believe that a subset-wide tariffing requirement for individually-negotiated arrangements would be counter-productive. That rule would discourage LECs from agreeing to negotiate innovative or customized virtual collocation arrangements because

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[98] To date, several LECs have been granted exemptions. Expanded Interconnection with Local Telephone Company Facilities, Petitions for Exemption from Physical Collocation Requirement, Memorandum Opinion and Order, CC Docket No. 91-141, 8 FCC Rcd 4569 (Com. Car. Bur. 1993); Expanded Interconnection with Local Telephone Company Facilities, BellSouth Telecommunications, Inc., Carolina Telephone and Telegraph Co., and GTE Service Corporation, Petitions for Exemption from Physical Collocation Requirement, Memorandum Opinion and Order, CC Docket No. 91-141, 8 FCC Rcd 4871 (Com. Car. Bur. 1993); Expanded Interconnection with Local Telephone Company Facilities, Petitions for Exemption from Physical Collocation Requirement for Central Offices Located in Maryland, Memorandum Opinion and Order, CC Docket No. 91-141, DA 93-875 (Com. Car. Bur., released August 6, 1993).

[99] Special Access Order, 7 FCC Rcd at 7390, ¶ 40.

it would trigger a requirement to tariff any such arrangements in numerous other offices. Thus, the broader tariffing requirement could impede advances in the development of innovative collocation offerings. We believe that it better serves the public interest to encourage LECs to negotiate individual virtual collocation arrangements that satisfy the specific needs of interconnectors given the particular features of a central office.[100]

59. We also see no reason to require provision of interstate virtual collocation in the full subset of offices when the intrastate virtual collocation offering is being implemented on a more limited basis. The purpose of the original subset-wide requirement for interstate tariffing of virtual collocation when virtual collocation was offered in the intrastate jurisdiction was to ensure provision of interstate virtual collocation where such intrastate virtual collocation was available. On reconsideration, we modify the original requirement because the subset-wide rule could force LECs to provide interstate virtual collocation in LEC facilities where virtual collocation is not tariffed at the state level. We conclude that our original objective of ensuring that interstate virtual collocation is available in all offices where it is offered at the state level can be accomplished with the new rule adopted today.

V. CONNECTION CHARGE RATE STRUCTURE

60. Background. In the Special Access Order, we did not impose detailed rate structure requirements. We instead allowed the LECs to establish reasonable disaggregated rate subelements for connection charges for expanded interconnection, except that we

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[100] We are not persuaded by MCI's and CompTel's claim that the subset-wide rule for tariffing individually negotiated virtual collocation arrangements is necessary to avoid LEC discrimination. Under the new rule adopted today, any interconnector could still take advantage of an individually negotiated arrangement in the affected central office. We also believe that the LECs have little incentive to offer preferential expanded interconnection arrangements to large customers since this would facilitate removal of traffic from the LEC network. The parties also have failed to convince us that broader availability of any potentially preferential arrangement allegedly favoring the larger IXCs would protect the interests of the smaller IXCs.

Contrary to USTA's assertion, the subset-wide requirement originally adopted does not apply when LECs provide virtual collocation due to space exhaustion for physical collocation. Therefore, our modification of the rule is not driven by the effect alleged by USTA.

required the LECs to establish a cross-connect element that applies uniformly to both physical and virtual collocation.[101]

61. Discussion. Based on our experience with the special access expanded interconnection tariffs, we conclude that the tariff review process will be facilitated by specifying certain standards that must be met in order for a rate structure to be considered reasonable. First, the rate structures used by each LEC are to reflect cost causation principles, i.e., the manner in which costs are incurred in providing expanded interconnection services. In addition, the LECs are to unbundle their rate structures, in order to ensure that interconnectors are not forced to pay for services that they do not need. Unbundling also will improve the Commission's ability to scrutinize filed rates to prevent anticompetitive pricing and discrimination. This approach will provide all parties with more specific principles by which to evaluate the reasonableness of expanded interconnection rate structures.

VI. CONCLUSION

62. In this Order, we have considered de novo the fresh look issue in light of the record developed on reconsideration and in the comments on the Phase I Notice of Proposed Rulemaking concerning switched transport expanded interconnection. The measures we adopt here should allow access customers to enjoy the benefits of competition without delay. We also have expanded our previously adopted standard requiring neutral application of nonrecurring reconfiguration charges. In addition, we have revised the tariffing requirements for provision of virtual collocation in certain circumstances to encourage LECs to negotiate individual arrangements and to ensure availability of interstate virtual collocation arrangements where state arrangements exist. Finally, we have specified additional standards for the LEC connection charge rate structures. As noted above, other issues raised by the petitions for reconsideration will be addressed in a later order.

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[101] Special Access Order, 7 FCC Rcd at 7425, ¶ 121. Connection charges compensate LECs for the costs of providing physical and virtual collocation.

VII. ORDERING CLAUSES

63. Accordingly, IT IS ORDERED, pursuant to authority contained in Sections 1, 4, 201-205, and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, and 214, that Part 64 of the Commission's Rules are AMENDED as set forth in Appendix B hereto.

64. IT IS FURTHER ORDERED that the rules and requirements set forth herein ARE ADOPTED.

65. IT IS FURTHER ORDERED that the petitions for reconsideration and clarification of the Special Access Order ARE GRANTED to the extent discussed herein.

66. IT IS FURTHER ORDERED that the Petition of MFS Communications Company, Inc. for Expedited Decision of "Fresh Look" Issues is denied.

67. IT IS FURTHER ORDERED that except as specifically noted below, the policies, rules, and requirements adopted herein SHALL BE EFFECTIVE sixty days after publication in the Federal Register.

68. IT IS FURTHER ORDERED that the provisions setting forth the requirements for fresh look, and the provisions setting forth the requirements for nonrecurring reconfiguration charges, shall be effective thirty days after publication of this Order in the Federal Register.[102]

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[102] This effective date is subject to OMB approval pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501, et seq.

APPENDIX A -- List of Parties

Petitions for Reconsideration and Clarification

American Telephone and Telegraph Company (AT&T)
Association for Local Telecommunications Services (ALTS)
Central Telephone Company (Centel)
District of Columbia Public Service Commission (DC PSC)
GTE Service Corporation (GTE)
Independent Data Communications Manufacturers Association (IDCMA)
MCI Communications Corporation (MCI)
MFS Communications Co., Inc. (MFS)
National Association of Regulatory Utility Commissioners (NARUC)
NYNEX Telephone Companies (NYNEX)
Penn Access Corporation (Penn Access)
Rochester Telephone Companies (Rochester)
Sprint Communications Co. (Sprint)
Teleport Communications Group (Teleport)
Tennessee Public Service Commission (Tennessee)
United Telephone Companies (United)
United States Telephone Association (USTA)
WilTel, Inc. (WilTel)

Oppositions to Petitions

Ad Hoc Telecommunications Users Committee (Ad Hoc)
Ameritech Operating Companies (Ameritech)
Association for Local Telecommunications Services (ALTS)
American Petroleum Institute (API)
American Telephone and Telegraph Company (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
Competitive Telecommunications Association (CompTel)
GTE Service Corporation (GTE)
International Communications Association (ICA)
Independent Data Communications Manufacturers Association (IDCMA)
Information Industry Association (IIA)
Information Technology Association of America (ITAA)
MCI Telecommunications Corporation (MCI)
MFS Communications Co., Inc. (MFS)
National Association of Regulatory Utility Commissioners (NARUC)
NYNEX Telephone Companies (NYNEX)
Ohio Public Utilities Commission (Ohio)
Prodigy Services Company (Prodigy)
Rochester Telephone Company (Rochester)
Sprint Communications Co. (Sprint)
United Telephone Companies (United)
United States Telephone Association (USTA)
WilTel Telecommunications Group, Inc. (WilTel)

Replies to Oppositions

Association for Local Telecommunications Services (ALTS)
American Telephone and Telegraph Company (AT&T)
Ameritech Operating Companies (Ameritech)
District of Columbia Public Service Commission (DC PSC)
GTE Service Corporation (GTE)
Independent Data Communications Manufacturers Association (IDCMA)
MCI Telecommunications Corporation (MCI)
MFS Telecommunications Co., Inc. (MFS)
NYNEX Telephone Companies (NYNEX)
Penn Access Corporation (Penn Access)
Sprint Communications Co. (Sprint)
Teleport Communications Group (Teleport)
United Telephone Companies (United)
United States Telephone Association (USTA)
WilTel Telecommunications Group, Inc. (WilTel)

APPENDIX B -- Rule Changes

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Section 64.1401 of Subpart N of Part 64 is amended by revising paragraph (c) to read as follows:

§ 64.1401 Expanded interconnection.

* * * * *

(c) In addition to the obligations imposed by paragraph (b) of this section, the local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate special access through virtual collocation in a local exchange carrier location in which:

* * * * *

SEPARATE STATEMENT
OF
COMMISSIONER ANDREW C. BARRETT

RE: Expanded Interconnection with Local Telephone Company Facilities (CC Docket No. 91-141)

This Order on Reconsideration is a further step in the Commission's ongoing efforts to bring the benefits of competition to the provision of interstate special access services. The Order addresses several important issues in the implementation of special access expanded interconnection. It clarifies and refines the Commission's previous determinations on these issues.

Notably, the Order reaffirms the Commission's basic policies concerning "fresh look" provisions. It modifies the operation of the fresh look provisions to ensure that access customers with preexisting long term arrangements do not face undue impediments to obtaining service from an alternative supplier. Another important element of the Order is its mandate that any nonrecurring reconfiguration charges imposed by a local exchange carrier on an access customer be cost-based and applied in a neutral manner.

I fully support the determinations reached in this Order. In my view, they will help ensure that viable, widespread and effective competition in interstate special access services is realized.

FCC 93-379

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Expanded Interconnection with Local Telephone Company Facilities	)	CC Docket No. 91-141 Transport Phase I
	)	
Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board	)	CC Docket No. 80-286

SECOND REPORT AND ORDER
AND THIRD NOTICE OF PROPOSED RULEMAKING

Adopted: August 3, 1993 Released: September 2, 1993

By the Commission: Commissioner Barrett issuing a separate statement; Commissioner Duggan dissenting in part and issuing a separate statement.

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I. INTRODUCTION

A. Summary

1. In this Order, we remove another barrier to competition in the interstate access market. Last year, we took a historic step toward enhancing competition in the access marketplace by requiring Tier 1 local exchange carriers (LECs)[1], except NECA pool members, to provide expanded interconnection for interstate special access services.[2] Following in the footsteps of the Special Access Order, today we advance the Commission's efforts to bring the benefits of enhanced competition in the interstate access market to fruition by requiring expanded interconnection for switched transport services. We believe that this measure will increase efficiency, advance technological innovation, provide new and additional service alternatives for customers, and foster cost-based prices for services subject to competition.

2. Expanded interconnection for switched transport is a natural extension of expanded interconnection for special access and does not create unique regulatory issues. Most of the Commission's decisions concerning special access expanded interconnection can be directly applied to switched transport with few modifications. Furthermore, although the switched transport market is much larger than the special access market, expanded interconnection for switched transport will not threaten universal service. LECs will continue to receive the majority of transport revenues, including any universal service support flows, through the interconnection charge.[3]

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[1] Tier 1 LECs are companies having annual revenues from regulated telecommunications operations of $100 million or more for a sustained period of time. Commission Requirements for Cost Support Material to be Filed with 1990 Annual Access Tariffs, 5 FCC Rcd 1364, 1364 (Com. Car. Bur. 1990) (defining Tier 1 LECs using the criteria to define Class A companies in 47 C.F.R. §§ 32.11(a) and 32.11(e)).

[2] Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) (Special Access Order).

[3] The "interconnection charge," as defined in the Transport Order, is to be paid by all parties interconnecting with the LEC switched access network. See Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006 (1992) (Transport Order), recon., FCC 93-366 (released July 21, 1993), second recon., FCC 93-403 (released August 18, 1993). The interconnection charge recovers transport revenues not recovered through the other transport rate elements. This charge is distinguished from the "connection charges" that interconnectors

3. The rules that we adopt today largely mirror those that we adopted last year for interstate special access expanded interconnection. In this proceeding, parties have argued in some instances that switched transport expanded interconnection should not be subject to the same rules adopted in the Special Access Order. To the extent that they make this contention because of alleged significant differences between special access and switched transport expanded interconnection, we address their arguments in this Order. To the extent that the parties are effectively urging a change in the rules adopted in the Special Access Order, with limited exceptions, we reserve consideration of those arguments.[4] The Special Access Second Reconsideration Order adopted today, however, addresses a limited number of these issues;[5] we will consider the remaining issues in a subsequent reconsideration order.

4. In this Order, we generally require Tier 1 LECs to provide expanded interconnection to all interested parties. This will permit competitive access providers (CAPs), interexchange carriers (IXCs), and interested users to terminate their own switched access transmission facilities at LEC locations, including central offices, serving wire centers (SWCs), tandem switches, and certain remote nodes. Just as in special access, LECs must tariff expanded interconnection for switched transport through physical collocation, although the parties remain free to negotiate satisfactory virtual collocation arrangements. In conjunction with these measures, which we expect to increase competition for the provision of transport, we grant Tier 1 LECs additional switched transport pricing flexibility in the form of zone density pricing, and volume and term discounts. The interconnection policies and requirements for special access, as well as the LEC pricing requirements for special access expanded interconnection, apply to switched transport expanded interconnection except as indicated to

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must pay LECs for expanded interconnection services. See infra ¶¶ 72 and 84. See also Special Access Order, 7 FCC Rcd at 7423-33, ¶¶ 116-137.

[4] In the Notice of Proposed Rulemaking on switched transport expanded interconnection, we requested that parties seeking to challenge the architecture decisions made in the Special Access Order do so through petitions for reconsideration of that order. Expanded Interconnection with Local Telephone Company Facilities, Second Notice of Proposed Rulemaking, 7 FCC Rcd 7740, 7743 n.18 (1992) (Notice).

[5] Expanded Interconnection with Local Telephone Company Facilities, Second Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-141, FCC 93-378 (released September 2, 1993) (Special Access Second Reconsideration Order).

the contrary in this Order. These measures should create a sound regulatory structure for the competitive provision of interstate switched transport.

B. Background

5. In a Notice of Proposed Rulemaking adopted in conjunction with the Special Access Order, the Commission proposed to require Tier 1 LECs to offer interested parties expanded opportunities to interconnect with their access networks for the provision of interstate switched transport.[6] In most respects, we proposed to apply the same basic requirements for switched transport expanded interconnection that we adopted for special access expanded interconnection regarding interconnection architecture and standards, as well as the parties required to provide expanded interconnection and those entitled to use it.[7] The Commission also proposed to apply most of the rate structure and pricing rules established in the Special Access Order, proposed to allow LECs with operational expanded interconnection to engage in density zone pricing, and sought comment on whether LECs should be allowed to implement volume and term discounts for transport in a given study area once expanded interconnection is operational.[8]

II. PUBLIC INTEREST ANALYSIS

A. Cost-Benefit Analysis

6. Notice. In the Notice, we generally proposed to require Tier 1 LECs to offer expanded interconnection for interstate switched transport.[9] We believed that this action would produce important public interest benefits similar to those discussed in the Special Access Order.[10] Specifically, we tentatively concluded that it would increase incentives for efficiency and innovation, foster rapid deployment of new technologies, bring prices for services subject to competition closer to cost, and give access

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[6] Switched Transport Phase I of the rulemaking proceeding encompasses this issue. The Notice also initiated Switched Transport Phase II of the proceeding, which relates to the development of competitive networks that would offer tandem switching as well as transmission functions. This Order covers only with those issues raised in Transport Phase I.

[7] Notice, 7 FCC Rcd at 7742-44, ¶¶ 15-24.

[8] Id. at 7744-46, ¶¶ 25-35.

[9] Id. at 7741, ¶ 1.

[10] Id. at 7742, ¶ 10. See Special Access Order, 7 FCC Rcd at 7378-81, ¶¶ 13-18.

customers a broader range of service options.[11] We added that expanded interconnection for switched transport would bring benefits to a broader range of services and users than expanded interconnection for special access, and tentatively concluded that we could successfully address any potentially adverse effects of increased access competition, and avoid undermining universal service.[12]

7. Comments. AT&T, MFS, Teleport, Teleport Denver, MCI, Ad Hoc, EDS, SBA, GSA, New York, and the FTC Bureau of Economics generally support expanded interconnection for switched transport, contending that it will create substantial public interest benefits.[13] MFS claims that the Commission's tentative conclusions in the Notice regarding the public interest benefits of expanded interconnection for switched transport are "entirely correct" and that "the benefits of competition in producing economic efficiency and innovation are not disputed."[14] It also contends that expanded interconnection for switched transport is essential if the objectives of the Special Access Order are to be accomplished.[15] AT&T argues that expanded interconnection should lead to greater investment by CAPs and spur LECs to improve their access services by more rapidly deploying new technologies.[16] Similarly, Teleport Denver claims that expanded interconnection for switched transport will "benefit consumers through increased competition, improved technologies, operating efficiencies, and lower rates" and that expanded interconnection for switched transport is "essential for

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[11] Notice, 7 FCC Rcd at 7741, ¶ 1.

[12] Id. at 7742-43, ¶¶ 10-14.

[13] AT&T Comments at 2-3; MFS Comments at 1-5; Teleport Comments at 1-2; Teleport Denver Comments at 2-3; MCI Comments at 3; Ad Hoc Comments at 3-6; EDS Comments at 3-4; SBA Comments at 6-7; GSA Comments at 3-4; New York Comments at 2-3; FTC Bureau of Economics Reply Comments at 2, 13-17.

[14] MFS Comments at 3.

[15] Id. at 4. MFS asserts that without expanded interconnection for switched transport, LECs would be able to provide special access service at lower cost than interconnectors, because the LECs can carry both switched and special traffic over the same facilities, while their competitors could not. Thus, MFS states that without expanded interconnection for switched transport, special access expanded interconnection would have little economic value. Id. at 5.

[16] AT&T Comments at 3.

effective interstate switched transport competition."[17] The SBA agrees, asserting that:

> [s]witched access interconnection will provide millions of small businesses the opportunities to obtain the same type of telecommunication services now limited to large corporations and IXCs. This will ultimately lead to lower costs for small businesses . . . and make them more competitive.[18]

8. EDS contends that expanded interconnection for switched transport "has the potential to offer substantially greater benefits than expanded interconnection for special access," adding that these benefits include improved LEC efficiency and service quality, more rapid deployment of advanced technology, significant redundancy options, greater consumer choice, and reduced switched access prices.[19] EDS "does not envision any significant negative effects from the expansion of interconnection opportunities for switched access services."[20] Ad Hoc argues that to the extent that removal of existing barriers to competition produces meaningful competitive alternatives to LEC interstate access services, the benefits that competition has produced in the interexchange and customer premises equipment markets also will be realized in the exchange access market.[21] Ad Hoc emphasizes that multiple providers of interstate access services will enhance service reliability.[22] Thus, Ad Hoc urges the Commission to proceed with expanded interconnection for switched transport.[23]

9. A number of parties specifically argue that the benefits of expanded interconnection for switched transport can be achieved without undermining universal service. GSA contends that the interconnection charge established in the Transport Order,[24] which is imposed on all parties that interconnect with the LECs' switched access networks, "can be used to ensure that the Commission's

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17 Teleport Denver Comments at 2.

18 SBA Comments at 6.

19 EDS Comments at 3-4.

20 Id. at 4.

21 Ad Hoc Comments at 4.

22 Id.

23 Id. at 5.

24 See supra n.3.

universal service goals are not threatened in any way by the implementation of expanded interconnection."[25] Ad Hoc agrees that "at least for the foreseeable future, the [inter]connection charge provides an effective vehicle for mitigating any adverse impacts of switched transport competition on universal service."[26] Finally, even though it suggests that the issue of contribution must be addressed in part, to protect universal service, New York, which approved intrastate expanded interconnection for switched transport last year, urges us to "take this next step in furthering procompetitive policies."[27]

10. Several other parties contend that it is not in the public interest to mandate expanded interconnection for switched transport. First, some parties claim that our proposal will not enhance competition. SW Bell argues that expanded interconnection for switched transport will yield only a few additional market participants; that IXCs will not reduce prices as a result of access savings, but instead, will retain at least a portion, if not the majority, of the benefits of switched transport expanded interconnection as increased profits; and that collocation alone will not improve LEC efficiency.[28] SW Bell asserts that the narrow pricing flexibility accorded LECs will limit the extent to which overall market prices are likely to decline, and that prevailing LEC special access rates are sufficiently above the cost of providing service in high density markets to prompt competitive entry.[29] Therefore, according to SW Bell, collocation for switched

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[25] GSA Comments at 4.

[26] Ad Hoc Comments at 5.

[27] New York Comments at 3. In its state proceeding, New York concluded that switched access collocation was no different in principle from special access collocation and that similar arrangements could exist for both. Id. at 2. New York argues that the contribution issue must be addressed because expanded interconnection for switched transport "raises potentially more difficult issues than special access collocation, including the impact of competition on universal service objectives." Id. at 3. New York adds, "not only is the size of the market to be opened to competition significantly greater for switched access services, but so too is the size of the contribution presently made by switched access services." Id. at 3-4. New York also describes its regulatory contribution mechanism. Id. at 4.

[28] SW Bell Comments at 4-7.

[29] Id. at 10. According to SW Bell, switched access dedicated transport rates based on special access prices without term and volume discounts will invite inefficient competitive entry. Id. at 7, 8, 10.

transport should not be required until it is certain that "true" competition would result.[30] Bell Atlantic believes that expanded interconnection for switched transport simply would shift large segments of the access market from incumbents to new entrants without reducing prices.[31] Missouri argues that collocation may weaken LEC incentives for efficiency and customer service by encouraging competitors to take advantage of LEC investments rather than making their own investments and by protecting competitors rather than promoting competition.[32] SW Bell also argues that diversely routed transmission facilities and increased network reliability will not result solely from expanded interconnection for switched transport.[33]

11. Second, several commenters argue that expanded interconnection for switched transport would adversely affect rural areas and universal service. Focusing on the potential effects on universal service and toll rate averaging, TDS Telecom requests that before implementing expanded interconnection for switched transport, we: (1) consider the long range effects of fully developed access competition; (2) gain experience from special access competition; and (3) adopt a long-range solution that effectively will preserve toll rate averaging and high cost support.[34] NRTA requests that the Commission ensure that rural areas do not lose the support flows that underlie universal service

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[30] SW Bell Comments at 4. According to SW Bell, "within any truly competitive environment all market participants are free to respond to one another with equal opportunity to create new offerings under a flexible rate structure, and to effect price responses quickly and efficiently." Id. at 4-5.

[31] Bell Atlantic Comments at 1. Bell Atlantic argues that for customers, rather than a few select competitors, to benefit from expanded interconnection for switched transport, we must substantially modify our proposal, for example, by allowing LECs the same volume and term pricing options as interconnectors at the outset. Id. at 2-5.

[32] Missouri Comments at 3-4.

[33] SW Bell Comments at 7. According to SW Bell, the "availability of diversely routed transmission facilities will not be an innovative new component of telecommunications network architectures uniquely inherent to switched transport collocation . . . [and] diversely routed transmission facilities are already embedded in the high density routes of LEC, IXC, and large corporate end user networks." Id.

[34] TDS Telecom Comments at 6-7.

and rural network modernization.[35] It also argues that because switched transport competition is likely to result in further access deaveraging, with higher access rates in rural areas, a rule to prevent toll rate deaveraging is necessary to protect rural consumers.[36] In addition, NTCA urges us to consider the effect of switched competition on NECA pools, the Universal Service Fund, and the Lifeline Fund, and on the continued provision of quality telecommunications services to rural areas so that the progress already achieved regarding universal service is not reversed, but augmented.[37] Anchorage also argues that competition in rural areas would threaten universal service, jeopardize network modernization, and cause economic harm by creating incentives to deaverage long distance rates. According to Anchorage, because of Alaska's vast geographic area and sparse population, reasonably priced telecommunications are important in all facets of life, ranging from health care to education, and as a result, expanded interconnection is particularly inappropriate in Alaska.[38]

12. Concerned about universal service implications, Alabama and Missouri oppose implementing expanded interconnection for switched transport at this time. Alabama contends that "the unknown detriments" to a large number of telecommunications users outweigh the merits of our "rush" to implement our proposals.[39] Alabama also argues that our "premature creation of competitive markets through expanded interconnection without proper safeguards" may significantly disadvantage rural and poor communities[40] and that our proposal unlawfully would preempt legitimate state interests in intrastate switched transport policy.[41]

13. Discussion. We conclude that the public interest benefits of expanded interconnection for switched transport will parallel the benefits that we anticipate from expanded interconnection for special access. As we found in the Special Access Order, enhanced competition in the interstate access market should increase access providers' incentives for efficiency and

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[35] NRTA Comments at 2.

[36] Id.

[37] NTCA Comments at 4-5.

[38] Anchorage Reply Comments at 6. Anchorage requests that the Commission not require LECs in Alaska to provide expanded interconnection for switched transport. Id. at 8.

[39] Alabama Reply Comments at 13.

[40] Id. at 4.

[41] Id. at 7-9.

encourage deployment of advanced technologies facilitating new and innovative services.[42] We also conclude that expanded interconnection should provide additional service choices to access customers that value redundancy and route diversity.[43] In addition, it should increase access providers' responsiveness to customers in the provision of current services.

14. We also conclude that expanded interconnection for interstate switched transport should not have any significant detrimental effects. In particular, we are confident that the balanced approach we are adopting, as described below, will not in any way endanger the goal of universal service or harm service in rural areas.

15. This Order affects only interstate switched transport, which represents a fraction of the total access revenues that the LECs receive.[44] Any subsidy flows inherent in the existing transport rate structure will continue to be recovered through the transport interconnection charge. Currently, this charge must be paid by all parties that interconnect with the LEC switched networks, even if they use expanded interconnection arrangements. Thus, any subsidy flows are not threatened. The transport interconnection charge will continue to collect any universal service support flows pending completion of a rulemaking proceeding to address the interconnection charge and contribution issues.[45] We recognize that expanded interconnection for switched transport may shift some costs to the state jurisdictions through the separations process, but there is no basis for concluding that this will threaten universal service.[46]

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[42] Special Access Order, 7 FCC Rcd at 7380, ¶ 14.

[43] Although expanded interconnection will improve network reliability to some extent, we realize that certain LEC outages, such as breaks in cable facilities between a central office and user premises, also would interrupt service on CAP circuits interconnected with the affected LEC circuits. In addition, collocated CAP facilities would be vulnerable to damage to the LEC central office.

[44] The total interstate transport revenue for the Tier 1 local telephone companies for 1991 was approximately $4.2 billion. Notice, 7 FCC Rcd at 7742, ¶ 10 and n.13 (citing ARMIS Form 43-01 (4th Quarter 1991)).

[45] Transport Order, 7 FCC Rcd at 7063-66, ¶¶ 133-141.

[46] Given the additional pricing flexibility that our decision accords the LECs, we believe that any separations shifts should be relatively modest and gradual. Furthermore, in the past, even substantial jurisdictional reallocations of costs to the

16. We also have limited the expanded interconnection requirement to Tier 1 LECs. Therefore, the smaller LECs serving predominantly rural areas will not be required to open their networks. In addition, the operation of the Universal Service Fund, which provides support for subscribers in high-cost rural areas and for low income customers, is not affected by our action.[47]

17. Furthermore, we have provided the LECs additional pricing flexibility to afford them a reasonable opportunity to compete. Under this decision, LECs of course will face increased competition. Thus, CAPs undoubtedly will capture a certain amount of switched transport traffic, which will slow the growth in traffic on the LEC networks. The zone density pricing and volume and term discounts that we are authorizing in this Order, however, should allow LECs to compete effectively when they are the low cost provider. As a result, there is no basis for believing that the measures we are adopting will simply reallocate a large portion of the market to new entrants, rather than creating a competitive marketplace.[48]

18. We do not believe that expanded interconnection for switched transport will cause geographic Message Toll Service (MTS) rate deaveraging by AT&T. As in our AT&T Price Cap decision,[49] we reaffirm "our strong commitment to geographic rate averaging."[50] We also reaffirm our intent to suspend and fully investigate any tariff filing by AT&T proposing to geographically deaverage its MTS

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states have not undermined universal service.

[47] The Commission also will continue to study the broad issue of access reform. For example, the Commission has released a staff paper on access. "Federal Perspectives on Access Charge Reform, A Staff Analysis" (Common Carrier Bureau Access Reform Task Force) (April 30, 1993). NARUC has also filed a petition asking for an inquiry on access issues. NARUC Petition for Notice of Inquiry Addressing Access Issues, dated June 25, 1993. The Commission has provided an opportunity for interested parties to comment on these documents.

[48] Given the current extent of interexchange competition, we believe it highly unlikely that IXCs will be able to retain the benefits of access price reductions instead of passing them on to consumers.

[49] Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873 (1989) (AT&T Price Cap Order).

[50] Id. at 3133.

rates. In such a proceeding, AT&T would bear a very heavy burden in justifying its proposal. Furthermore, given that other decisions of this Commission deaveraging access rates[51] did not result in AT&T deaveraging its MTS rates, we do not find it necessary to adopt a specific rule barring AT&T from deaveraging at this time.[52]

19. Finally, we believe that expanded interconnection for switched transport will enhance, rather than undermine, network reliability. Interconnector networks will provide access customers additional options for diverse routing of traffic and redundancy. In addition, we have allowed the LECs to take ample steps to ensure that the reliability of their facilities is not threatened by the presence of interconnectors.

20. Based on this analysis, we conclude that expanded interconnection for the provision of interstate switched access service will produce substantial public interest benefits that outweigh prospective drawbacks. We therefore require the LECs, as specified below, to implement expanded interconnection for switched transport.[53]

B. Timing of Commission Action

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[51] See, e.g., MTS and WATS Market Structure and Amendment of Part 69 of the Commission's Rules, Phase I, Third Report and Order, 93 FCC2d 241, (1983) (Commission permitted LECs to leave NECA NTS pool).

[52] See AT&T Price Cap Order, 4 FCC Rcd at 3129-34. We concluded that implementation of price caps for AT&T does not place our rate averaging policies at risk. Id. at 3133-34.

[53] In the Special Access Order, we prohibited interconnectors from using "interstate special access expanded interconnection offerings to connect their transmission facilities with the local exchange carrier's interstate switched services." 47 C.F.R. § 64.1402(c). Thus, generally interconnectors cannot ratchet, i.e., carry switched access traffic over interconnected special access circuits even if they pay the full switched transport access charge to the LEC. Special Access Order, 7 FCC Rcd at 7420-21, ¶ 109. The prohibition on ratcheting will be eliminated when LEC tariffs offering expanded interconnection for switched transport become effective. While this provision was necessary to limit expanded interconnection to special access, once expanded interconnection for switched transport is in effect, requiring interconnectors to use separate facilities for switched and special access traffic would be inefficient, artificially increasing the cost of interconnected services without any accompanying benefits.

21. Notice and Comments. In the Notice, we tentatively concluded that expanded interconnection for switched transport should become effective no later than the scheduled date for implementation of the interim transport rate structure, November 1, 1993.[54] Many parties urge the Commission to proceed as planned.[55] LECs and a few other parties argue that expanded interconnection for switched transport should not take effect on November 1, 1993. They claim that the interim transport rate structure is not cost-based and will not provide LECs sufficient pricing flexibility to compete once expanded interconnection is in place.[56] Some commenters ask the Commission to delay expanded interconnection for switched transport until petitions for reconsideration and appeals of the Special Access Order are decided, or until a comprehensive access reform proceeding has been completed.[57] Some parties request that Phase I of the transport expanded interconnection rulemaking not be decided until we address the Phase II issues.[58] They claim that without competition in the provision of tandem switching, which requires resolution of the Phase II signalling issue, not all IXCs will benefit from expanded interconnection.

22. Discussion. We believe that the Commission must proceed expeditiously to remove barriers to competition and to allow

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[54] Notice, 7 FCC Rcd at 7746, ¶ 37.

[55] Ad Hoc Reply Comments at 11-16; AT&T Reply Comments at 9-12; GSA Comments at 6-7, Reply Comments at 10; MFS Comments at 19-20, Reply Comments at 4-7; Sprint Comments at 2; Teleport Reply Comments at 1-2.

[56] BellSouth Comments at 5-8; Cincinnati Bell Comments at 2-5; NYNEX Comments at 19-20; PacTel Comments at 26-38; SNET Comments at 3-4; SW Bell Comments at 16-17; USTA Comments at 4-15, Reply Comments at 13; US West Comments at 14-24, Reply Comments at 2-3. See also California Reply Comments at 2-4; NTCA Comments at 7-10.

[57] Bell Atlantic Reply Comments at 3; Arizona Comments at 1-3; BellSouth Comments at 12; GTE Reply Comments at 2-5; NECA Reply Comments at 8-10; SW Bell Reply Comments at 17-20; USTA Comments at 3, 16-21, Reply Comments at 13-18; US West Comments at 4-14. Ameritech claims that physical collocation should not be mandated for transport until resolution of appeals concerning mandated physical collocation for special access. Ameritech Comments at 14-16.

[58] Allnet Comments at 1-5, 7-8; WilTel Comments at 11-12; SBA Comments at 7. Phase II of the Notice concerns development of competitive networks that would offer switching as well as transmission functions.

interconnectors to use their facilities efficiently for carriage of both special access and switched transport traffic. Proceeding with expanded interconnection for switched transport while the interim transport rate structure is in place generally does not impede competition by the LECs as they allege. It was primarily interconnectors rather than the LECs who were disadvantaged by the prior requirement that LECs provide only bundled tandem-switched transport. Under such a rate structure, the CAPs in most cases cannot compete effectively with the LECs for provision of either individual segment of the tandem switched transport route. The interim rate structure has been modified since the LECs originally made this argument, and as a result, LECs will now offer tandem-switched transport on both a bundled and unbundled basis.[59] We also emphasize that under the interim transport rate structure, the interconnection charge, which must be paid by all parties using LEC switched access services, will recover the majority of current transport costs. Finally, in this Order, we are providing the LECs pricing flexibility for their switched transport services in the form of density zone pricing and volume and term discounts.

23. We also conclude that it is not necessary to await reconsideration or court review of the Special Access Order before acting on switched transport. Except for the resolution of the basic question of whether to proceed with expanded interconnection for switched transport, this Order focuses on whether switched transport expanded interconnection should be treated differently from special access expanded interconnection. Our actions in this regard do not foreclose the Commission from revisiting issues originally decided in the Special Access Order in a subsequent reconsideration order. In the companion reconsideration Order adopted today, we are ruling on certain limited issues raised on reconsideration that are particularly time-sensitive.[60] With

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[59] Transport Rate Structure and Pricing, First Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-213, FCC 93-366, at ¶ 9 (released July 21, 1993) (First Transport Reconsideration Order).

[60] Special Access Second Reconsideration Order, supra n.5. In the First Reconsideration Order in this docket, we reduced the initial collocation initial tariffing requirement from all end offices, serving wire centers, and other points relevant for calculating special access rates to a subset of offices. Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, CC Docket No. 91141, 8 FCC Rcd 127, 128-30, ¶¶ 7-18 (1992) (Special Access First Reconsideration Order).

The Special Access Second Reconsideration Order examines fresh look issues de novo. It also addresses the limited issue of how broadly LECs must offer certain virtual collocation arrangements, modifying the tariffing requirements in a way that will encourage

respect to court review, implementation of our Special Access Order has not been stayed, and we find no reason to delay action on expanded interconnection for transport while appeals of the Special Access Order proceed.

24. Finally, it is unnecessary to resolve Phase II issues concerning tandem switch competition simultaneously with Phase I of the rulemaking on expanded interconnection for switched transport. The interim transport rate structure and pricing plan includes a number of measures that should adequately protect small and medium IXCs that use tandem-switched transport, and this Order does not affect those protections. Thus, we conclude that users of tandem-switched transport will not be unfairly disadvantaged by a decision to proceed with expanded interconnection prior to completion of Phase II of the rulemaking.

25. Contrary to the proposal in the Notice, however, we will require the LECs to file tariffs for interstate switched transport expanded interconnection on November 18, 1993, with a scheduled effective date of February 15, 1994. This change in schedule will facilitate review by the Commission staff and interested parties of both the transport tariffs filed on September 1, 1993 and the switched transport expanded interconnection tariffs.

III. INTERCONNECTION ARCHITECTURE

26. Notice. In the Notice, we proposed to adopt the same basic architecture for switched transport expanded interconnection that we established for special access.[61] We proposed to require Tier 1 LECs to offer expanded interconnection for switched transport through physical collocation, thus allowing interconnectors to install, maintain, and repair their own equipment.[62] We also proposed to incorporate the two exemptions from the physical collocation requirement established in the Special Access Order (insufficient space or qualifying state decision) and to require that LECs granted an exemption offer virtual collocation.[63] In addition, we proposed in the Notice to allow interconnectors using virtual collocation to monitor and

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parties to negotiate virtual collocation arrangements. In addition, the Order expands on our prior requirements applicable to nonrecurring reconfiguration charges. Finally, that Order clarifies the connection charge rate structure requirements.

[61] Notice, 7 FCC Rcd at 7743, ¶ 15.

[62] Id. See Special Access Order, 7 FCC Rcd at 7389-90, ¶ 39.

[63] Notice, 7 FCC Rcd at 7743, ¶ 15. See Special Access Order, 7 FCC Rcd at 7389-94, ¶¶ 39-46.

control their circuits and to reasonably designate the central office equipment to be dedicated to their use.[64] Finally, we proposed to require LECs to tariff virtual collocation in certain other situations.[65]

27. Comments. MCI, MFS, and GSA argue that the Commission should apply the same architecture policies for switched transport expanded interconnection that it adopted for special access.[66] The other parties addressing this issue focus primarily on the merits of our original decision to require physical collocation rather than on whether the architecture for special access and switched transport expanded interconnection should differ.[67]

28. Some parties commented on our proposal in the Notice to adopt the provisions of the Special Access Order concerning the scope of virtual collocation offerings. In the Special Access Order, we required LECs that offer virtual collocation in a central office pursuant to an individually negotiated arrangement to tariff that arrangement throughout the study area. MCI supports this proposal.[68] CompTel generally argues that virtual collocation should be required everywhere that physical collocation is required and contends that there is substantial danger that the LECs will

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[64] Notice, 7 FCC Rcd at 7743, ¶ 15. See Special Access Order, 7 FCC Rcd at 7392-94, ¶¶ 44-46. In addition, our proposals for switched transport incorporated by reference our special access requirements that LECs: (1) install, maintain, and repair interconnector equipment under the same time intervals and with the same failure rates that apply to the performance of similar functions for comparable LEC equipment; (2) provide a foundation for evaluating possible complaints by keeping records and filing reports annually on the installation, maintenance, and repair times for comparable LEC and interconnector equipment and circuits. Special Access Order, 7 FCC Rcd at 7393-94, ¶¶ 45-46.

[65] Notice, 7 FCC Rcd at 7743, ¶ 15. See Special Access Order, 7 FCC Rcd at 7489-90, ¶ 259 and n.605.

[66] MCI Comments at 3; MFS Comments at 5-6; GSA Comments at 4-5. See also New York Comments at 2-3 (although the requirements for switched transport should be similar to those for special access, the Commission should not mandate uniform interstate interconnection requirements across all states).

[67] As noted supra ¶ 3, we will address such arguments in a future reconsideration of the Special Access Order.

[68] MCI Reply Comments at 21.

negotiate discriminatory arrangements with AT&T.[69] It suggests that to "guard against such discrimination, the Commission should require that virtual collocation arrangements be provided under generally available tariffs."[70] USTA, United, PacTel, and GTE, however, urge limiting the requirement to the particular central office where the negotiated arrangement is first offered, rather than requiring study area-wide tariffing.[71] USTA and United claim that the proposed study area requirement would discourage LECs from entering virtual collocation arrangements tailored to particular interconnectors.[72] PacTel asserts that the requirement would "conflict with the intent of the Commission to establish physical collocation as the primary form of expanded interconnection."[73]

29. Discussion. We conclude that interconnectors should have the right to obtain physical collocation for switched transport interconnection, and require the LECs subject to this Order to make physical collocation available to all interested parties subject to two limited exceptions.[74] The parties have not demonstrated any persuasive reason to treat switched transport and special access expanded interconnection differently and we find no reason to do so. Thus, as is the case for special access, the LECs must offer expanded interconnection for switched transport through physical collocation at all locations included in the subset of offices subject to expanded interconnection, except for locations covered

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[69] CompTel Comments at 9 n.17; CompTel Ex Parte Letter from Jeffrey S. Linder to William F. Caton, Acting Secretary, FCC (July 23, 1993) (CompTel Ex Parte Letter) at 1.

[70] CompTel Comments at 9 n.17.

[71] USTA Comments at 26-27; United Comments at 6-7; PacTel Comments at 44-45; GTE Comments at 30-31.

[72] USTA Comments at 26-27; United Comments at 6-7. See also PacTel Comments at 44-45 (rather than requiring generally available tariffs, Commission should limit tariffing of virtual to individual central office or to bona fide requests).

[73] PacTel Comments at 45. According to PacTel, under this rule, LECs would have to provide both physical and virtual collocation in central offices where no exemption applies. Id. at 44-45.

[74] In the Special Access Order, we found that almost all interconnectors believed that physical collocation best ensures that they are provided interconnection on the same terms and conditions as the LECs interconnect their own circuits. In order to ensure fair opportunities for all market participants, we concluded that interconnectors should have a right to physical collocation. Special Access Order, 7 FCC Rcd at 7389-90, ¶ 39.

by a space or state decision exemption.[75] The LEC must file a virtual collocation tariff that covers the locations (within the subset) that are exempt from the physical collocation requirement.[76]

30. We also will apply the same standards for special access virtual collocation to expanded interconnection for interstate switched transport.[77] The parties have not provided any persuasive reason to impose virtual collocation policies for switched transport that differ from those we adopted in special access, and we see no reason to do so. Thus, consistent with our Special Access Order, interconnectors using virtual collocation arrangements for switched transport are permitted to designate the LEC transmission equipment dedicated to their use, as well as monitor and control their circuits terminating in LEC facilities.[78] In providing virtual collocation for switched transport, LECs must install, maintain, and repair interconnector equipment under the same time intervals and with the same failure rates that apply to the performance of similar functions for comparable LEC equipment.[79]

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[75] See ¶ 31, supra.

[76] Under physical collocation, interconnectors must pay for LEC central office space in which to locate the equipment necessary to terminate their transmission links, and have physical access to the LEC central office to install, maintain, and repair their equipment. See Special Access Order, 7 FCC Rcd at 7389-90, ¶ 39.

[77] Special Access Order, 7 FCC Rcd at 7390-94, ¶¶ 40, 42-46. We imposed specific conditions on LEC provision of virtual collocation in order to minimize any technical differences between physical and virtual collocation. Id. at 7391-92, ¶ 43.

[78] As in the case of virtual collocation for special access, interconnector-designated equipment used for switched transport must meet applicable fire and safety codes, and interconnectors must bear any additional costs reasonably incurred by the LECs as a result of the interconnector's choice of equipment. See Special Access Order, 7 FCC Rcd at 7392-93, ¶ 44.

[79] To provide a foundation for evaluating possible complaints, LECs must keep records and file reports annually with the Common Carrier Bureau on the installation, maintenance, and repair times for comparable LEC and interconnector equipment and circuits. In the event that problems develop with LEC installation, maintenance, and repair under virtual collocation, we will take corrective action. See Special Access Order, 7 FCC Rcd at 7393-94, ¶ 45.

31. The two grounds for exemption from the physical collocation requirement that we authorized in the Special Access Order (lack of physical space and state adoption of an order favoring virtual collocation or allowing LECs to choose between virtual and physical collocation for intrastate special access expanded interconnection) shall apply to switched transport as well. First, the LEC locations for which we have granted exemptions from the physical collocation requirement based on space considerations automatically will be exempt from the physical collocation tariffing requirement for the provision of expanded interconnection for interstate switched transport.[80] Thus, a LEC will not have to file physical collocation tariffs for offices where the LEC already has been granted a space exemption. If other central offices, serving wire centers, remote nodes, or tandem offices not covered by the existing exemption orders lack adequate space for physical collocation, LECs must request a space exemption

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In the Special Access Order, 7 FCC Rcd 7392 n.101, we stated that "we will require interconnectors to comply with any rules adopted by the Commission based on the 'best practices' and related network integrity and operational safeguards now being developed under the aegis of the Commission's Network Reliability Council (of which several CAPs as well as major users and user groups are members)." In its comments, GTE suggests that the Network Reliability Council be directed to develop practices and procedural safeguards that would ensure that expanded interconnection for switched transport does not diminish network reliability and that such rules be adopted before expanded interconnection tariffs become effective. GTE Comments at 33-34.

On June 10, 1993, the Network Reliability Council (Council) released its report, "Network Reliability: A Report to the Nation." We expect LECs and interconnectors to carefully consider the recommendations to the industry, as well as complying with any subsequent Commission rules, so that both interconnectors and LECs take necessary steps to safeguard network reliability.

[80] Expanded Interconnection with Local Telephone Company Facilities, Petitions for Exemption from Physical Collocation Requirement, Memorandum Opinion and Order, CC Docket No. 91-141, 8 FCC Rcd 4569, 4569-75, 4583-84 (Com. Car. Bur. 1993) (First Special Access Exemption Order); Expanded Interconnection with Local Telephone Company Facilities, Petitions for Exemption from Physical Collocation Requirement, BellSouth Telecommunications, Inc., Carolina Telephone and Telegraph Co., and GTE Service Corporation, Memorandum Opinion and Order, CC Docket 91-141, 8 FCC Rcd 4871 (Com. Car. Bur. 1993) (Second Special Access Exemption Order). LEC locations lacking space for special access expanded interconnection would have the same constraints when used in providing expanded interconnection for switched transport.

for the applicable location. The LEC, however, must file a virtual collocation tariff for any location that is granted a space exemption. LECs for which we granted exemption requests based on state regulation in the special access proceeding will be exempt from the physical collocation requirement for switched transport expanded interconnection to the extent of the exemption for special access.[81] There will not be a second opportunity for state regulatory action qualifying LECs for the state exemption.

32. In addition to the requirement that LECs generally tariff virtual collocation for offices exempt from the physical collocation requirement, there are two situations in which LECs must offer virtual collocation.[82] We address those situations now. First, as with special access, LECs may negotiate virtual collocation arrangements with interested parties regardless of whether the LEC's general expanded interconnection tariff is for physical collocation, or for virtual collocation pursuant to a state exemption. As is the case with special access, pursuant to the Second Reconsideration Order adopted today, if a LEC negotiates a switched transport virtual collocation arrangement with an interconnector, it must make that virtual collocation arrangement available to other parties in the actual LEC location involved.[83] The LEC, however, need not make that virtual collocation

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[81] See First Special Access Exemption Order, 8 FCC Rcd at 4575-84 (granting LECs exemptions from the physical collocation requirement for their locations in the states of Arkansas, Indiana, Maryland (temporarily), Ohio, and Wisconsin based on those states' decisions regarding provision of intrastate expanded interconnection); Expanded Interconnection with Local Telephone Company Facilities; Petitions for Exemption from Physical Collocation Requirement for Central Offices Located in Maryland, Memorandum Opinion and Order, CC Docket No. 91-141, DA 93-875 (Com. Car. Bur.; released August 6, 1993) (Third Special Access Exemption Order) (permanently granting Bell Atlantic an exemption from the physical collocation requirement based on Maryland's intrastate special access expanded interconnection decision).

[82] Special Access Order, 7 FCC Rcd at 7490, ¶ 259. We also specified that any individually negotiated virtual collocation arrangements are to be made available to all interested parties throughout the study area. Id. at n.605. When a LEC offers an intrastate virtual collocation arrangement, the terms of its interstate virtual collocation tariff may differ from those of the intrastate arrangement. Id. at 7490, ¶ 259.

[83] See infra ¶ 35.

arrangement available in the entire subset of offices where expanded interconnection is being implemented.[84]

33. This approach will facilitate the development of innovative virtual collocation offerings. As explained in our companion Special Access Second Reconsideration Order, the study area-wide requirement for tariffing of individually negotiated arrangements that we originally adopted in the Special Access Order, and proposed in the Notice, would discourage LECs from agreeing to negotiate innovative or customized virtual collocation arrangements because LECs would be required to tariff any such arrangements in numerous other offices.[85] Thus, the broader tariffing requirement could impede advances in the development of collocation. We prefer to encourage LECs to enter into arrangements that satisfy the specific needs of interconnectors, given the particular features of a central office.

34. Furthermore, if a LEC offers an intrastate virtual collocation arrangement,[86] it must file interstate tariffs offering virtual collocation in the actual LEC locations in which it offered the intrastate arrangement. Under these circumstances, the LEC need not make virtual collocation available in the full subset of LEC locations designated for implementation of expanded interconnection, as proposed in the Notice.[87] We believe that the rule proposed in the Notice would have adverse effects on the development of expanded interconnection, and that the requirement

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[84] In the Special Access Order, we required LECs to tariff specially negotiated virtual collocation arrangements throughout the study area. 7 FCC Rcd at 7490, ¶ 259. In the Special Access First Reconsideration Order, supra n.59, we reduced the original study area-wide physical collocation tariffing requirement to a subset of LEC offices. 8 FCC Rcd at 128-29, ¶¶ 7-18. This effectively limited the study area-wide requirement for providing virtual to that subset of offices.

[85] Special Access Second Reconsideration Order at ¶¶ 56-59.

[86] Such arrangements could include, for example, those (1) offered purely voluntarily; (2) offered pursuant to a state experimental policy; or (3) offered pursuant to a state order adopted after the February 16, 1993 deadline established in the Special Access Order for state decisions to qualify for an exemption.

[87] In the Special Access Order, we initially required LECs to make virtual collocation generally available throughout each study area where intrastate virtual collocation arrangements are provided. Special Access Order, 7 FCC Rcd at 7489, ¶ 259. This study area-wide rule also was effectively narrowed to a subset of LEC offices. See supra n.60.

established here instead will achieve our objectives. The purpose of the subset-wide requirement proposed in the Notice was to ensure the provision of interstate virtual collocation where intrastate virtual collocation was available. The subset-wide tariffing requirement, however, could force LECs to provide interstate virtual collocation in LEC locations where virtual collocation is not available at the state level. There is no reason to do this on the interstate level, when intrastate virtual collocation is being implemented on a more limited basis. Thus, we conclude that our original objective of ensuring that interstate virtual collocation is available in all offices where it is offered at the state level can be accomplished under this rule.

35. These virtual collocation requirements do not affect the obligation of a LEC to tariff interstate virtual collocation when it has been granted an exemption from the physical collocation tariffing requirement.[88] Therefore, when a LEC has been granted a space exemption in a specific location, the LEC must file a virtual collocation tariff for that location. In addition, a LEC that has been granted an exemption based on state action must file an interstate virtual collocation tariff for switched transport covering all of the exempt LEC locations in the subset of offices designated for collocation. In the case of a LEC central office in an exempt state where the LEC also has an individually negotiated interstate switched transport virtual collocation arrangement, the LEC must file a general interstate virtual collocation tariff in conjunction with the state exemption, as well as the individually negotiated virtual collocation tariff.

IV. AVAILABILITY OF EXPANDED INTERCONNECTION

A. Parties That Must Provide Expanded Interconnection

36. Notice. We tentatively concluded in the Notice that we should treat switched transport expanded interconnection the same as special access and require all Tier 1 LECs, except NECA pool members, to offer interstate switched transport expanded interconnection.[89]

37. Comments. AT&T, Illinois, and GSA oppose our proposal. AT&T argues that our proposal fails to consider several factors unique to switched transport and that all LECs capable of offering direct-trunked transport, not just Tier 1 LECs, should be required

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[88] Special Access Order, 7 FCC Rcd at 7390-91, ¶ 41.

[89] Notice, 7 FCC Rcd at 7744, ¶ 24.

to provide expanded interconnection for switched transport.[90] AT&T contends that most of the consumers served by Tier 2 LECs use interstate services that depend on switched transport services; and that to exempt Tier 2 LECs would seriously harm consumers by keeping competition out of Tier 2 service areas.[91] Otherwise, according to AT&T, Tier 2 LECs would be insulated from any downward pricing pressures created by competition. AT&T also argues that further deaveraging of switched transport rates with reductions in Tier 1 LEC high-traffic areas and exemption of Tier 2 LECs will discourage further entry by IXCs into high-cost areas. According to AT&T, switched access rates charged by some LECs exceed the total revenues that an IXC receives for an interstate MTS call, thereby discouraging, if not precluding entry.[92] AT&T also argues that it and other IXCs serving rural areas will not be able to maintain averaged toll rates if their costs increase in relation to the costs incurred by their competitors.[93] Illinois also urges us to consider expanded interconnection for non-Tier 1 LECs, contending that entry of CAPs into rural areas could enhance economic development by attracting medium and large businesses to the area.[94] In addition, GSA argues that all LECs should be required to offer expanded interconnection for switched transport.[95]

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[90] AT&T Comments at 7-12. AT&T contends that Tier 2 LECs provide more switched than special access services. It asserts that "Tier 2 LECs provide only 2.7% of all special access, but provide 8.8% of all carrier paid interstate switched access." AT&T Comments at 8 n.7.

[91] Id. at 8-12.

[92] AT&T Comments at 11-12. AT&T argues that most Tier 2 LECs serve rural areas, that their switched rates are already 2.25 times higher than the average switched access rates charged by Tier 1 LECs, and that if expanded interconnection results in lower prices for switched transport, this rate disparity will only increase. Furthermore, according to AT&T, under zone density pricing, within three years LECs will be able to reduce transport rates in more competitive areas by up to 30% and raise them in less competitive areas by up to 15%. Id. at 10-11 & n.14.

[93] AT&T Comments at 11-12.

[94] Illinois Comments at 5-8. Illinois recognizes, however, that "given past regulatory treatment by a state public utility commission in such areas as depreciation and allowed rate of return," the ability of a non-Tier 1 LEC to respond to competitive entry may be different from that of Tier 1 LECs. Id. at 7-8.

[95] GSA Reply Comments at 8-10.

38. Various LECs and LEC representatives, MFS, and Ad Hoc support our proposal to require only Tier 1 LECs to provide expanded interconnection, with several arguing this is necessary to preserve universal service.[96] Anchorage argues that competition for Tier 2 LECs would jeopardize universal service, and threaten network modernization efforts.[97] NTCA claims that coverage of non-Tier 1 LECs would pressure those LECs to deaverage access rates in high volume areas to the detriment of universal service and system modernization plans that depend on constant revenue flows and access rate averaging.[98] Similarly, TDS Telecom asserts that Tier 2 areas would suffer disproportionately from lost efficiency and lost revenues if competition diverted access traffic in their markets. TDS Telecom and NTCA are concerned about the impact of switched transport competition on rural areas.[99] USTA argues that universal service could be compromised if expanded interconnection were extended to smaller LECs and urges us to review the current support flow system to assure that support flows underlying universal service and rural network modernization are not jeopardized.[100] NRTA supports our proposal to exempt Tier 2 LECs and NECA pool members, but argues that we also should exclude all rural areas.[101] Supporting our proposal to exclude NECA pool members, NECA argues that if expanded interconnection were required of Tier 2 LECs, NECA pool members would lose customers because they

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[96] NYNEX Comments at 10; OPASTCO Comments at 3-4, Reply Comments at 6-10; Anchorage Reply Comments at 2-6; NECA Reply Comments at 2-8; NTCA Reply Comments at 1-6; United Reply Comments at 4-8; USTA Reply Comments at 18-21; TDS Telecom Comments at 2; Ad Hoc Comments at 9; MFS Comments at 6-7.

[97] Anchorage Reply Comments at 2-6.

[98] NTCA Reply Comments at 1-6. NTCA argues that its members "will be affected directly by this proceeding because the proposal will unravel the interstate access charge structure . . . [and] NTCA members will be indirectly, adversely affected because they provide joint interstate access service in conjunction with Tier 1 carriers." NTCA Comments at 2. It argues further that "[t]he decision in this docket . . . should incorporate safeguards to assure that the progress already attained in achieving universal service in the country is not reversed but augmented. . . ." NTCA Comments at 4.

[99] TDS Telecom Comments at 2; NTCA Comments at 5. NTCA also requests that we consider the impact of switched transport competition on NECA pools, and support mechanisms such as the Universal Service Fund and the Lifeline Fund. Id.

[100] USTA Reply Comments at 18-21.

[101] NRTA Comments at 8.

do not have the pricing flexibility to respond to competition, and as a result, prices charged by small LECs could rise.[102]

39. Several parties specifically oppose AT&T's suggestion that all LECs be required to provide expanded interconnection for switched transport. Anchorage argues that if there is little demand for expanded interconnection in Tier 2 areas, mandating it for those areas would produce minimal benefits.[103] United contends that Tier 2 LECs will not be insulated from pricing pressures created by competition.[104] According to NTCA, if non-Tier 1 LECs were required to provide expanded interconnection for switched transport, customers would seek service from alternative providers, which would cause higher per-unit costs.

40. Discussion. We conclude that only Tier 1 LECs, other than NECA pool members, should be required to provide expanded interconnection for interstate switched transport. This approach will allow expanded interconnection in most urban and suburban areas where there is likely to be the most demand. There is likely to be substantially less demand for expanded interconnection in Tier 2 service areas.[105] Thus, the majority of the benefits

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[102] NECA Reply Comments at 2-8. See also OPASTCO Reply Comments at 6-10.

[103] According to Anchorage, because Tier 2 LECs provide only 8.8% of switched access, excluding them will have little impact on the benefits of expanded interconnection. Anchorage also argues that AT&T is wrong in contending that the requirement in the Transport Order that all LECs with measurement and billing capabilities must offer direct-trunked transport was intended to facilitate expanded interconnection. Anchorage asserts that the requirement was necessary to promote more efficient use of LEC networks. Anchorage Reply Comments at 2-6.

[104] According to United, the proliferation of AT&T points of presence (POPs) is an example of AT&T facilities substituting for LEC transport. United maintains that the mere threat of competition, i.e., IXC proliferation of POPs, will keep prices near costs. United Reply Comments at 4-5.

[105] As explained, supra, n.60 , in the Special Access First Reconsideration Order, we limited LEC tariffing of central offices to a subset of offices identified jointly by LECs and interconnectors. We believe that the Special Access First Reconsideration Order largely resolves the concerns raised by Tier 1 LECs about the requirement that they offer expanded interconnection in rural areas, given that interconnectors had an opportunity to designate rural offices for collocation but generally declined to do so.

available through expanded interconnection can be achieved while limiting its application to Tier 1 LECs. Although AT&T presents reasons to broaden the geographic scope of our requirement based specifically on factors related to switched transport, we believe that we should gain experience with expanded interconnection in Tier 1 service areas served by non-NECA members before considering the extension of this requirement.

B. Parties Entitled to Expanded Interconnection

41. Notice. In the Notice, we tentatively concluded that expanded interconnection for switched transport should be available to all third parties, including CAPs, IXCs, and end users.[106] Consistent with our decision in the Special Access Order,[107] we also tentatively concluded that we would not impose reciprocal interconnection obligations, but invited comment on the issue, including reciprocal obligations for non-carrier interconnectors such as end users.[108] In addition, we proposed to impose the same requirements on AT&T for the use of switched transport expanded interconnection as we adopted for special access.[109]

42. Comments. Ad Hoc, AT&T, NYNEX, PacTel, and MFS support our proposal to make expanded interconnection for switched transport available to all parties as we did for special access.[110] Regarding reciprocity, Bell Atlantic, GTE, PacTel, and SW Bell support requiring reciprocal interconnection between interconnectors and LECs. MFS contends that although reciprocal interconnection is acceptable in general, it is irrelevant for direct-trunked switched transport. According to MFS, switched transport service is used by third parties to gain access to LEC central office switches and common lines, and all local exchange

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If an exchange in which interstate expanded interconnection is offered is sold by a Tier 1 LEC to a Tier 2, the Tier 2 LEC must honor the arrangement and accept new expanded interconnection customers in that office. This is necessary to prevent disruption of LEC services provided to interconnectors.

[106] Notice, 7 FCC Rcd at 7744, ¶ 24 and n.23. This includes radio common carriers, cellular carriers, and personal communications providers.

[107] Special Access Order, 7 FCC Rcd at 7403 n.167.

[108] Notice, 7 FCC Rcd at 7744 n.21.

[109] Id. at 7744, ¶ 24. See Special Access Order, 7 FCC Rcd at 7403-04, ¶¶ 66-68.

[110] Ad Hoc Comments at 9-10; AT&T Comments at 5-6; MFS Comments at 6-7; NYNEX Comments at 10; PacTel Comments at 43.

service is provided either by LECs or resellers. Therefore, MFS asserts, there are no non-LEC switched access services to which LECs would want to interconnect.[111] USTA asserts that MFS' argument that reciprocity is irrelevant for switched transport is wrong because switched and special access technically cannot be separated and are substitutable.[112]

43. WilTel and MCI oppose our proposal to treat AT&T like other interconnectors and they as well as CompTel seek further restrictions on AT&T. WilTel argues that AT&T should not be allowed to interconnect and pay only the cross-connect charge at existing POPs in LEC offices unless a CAP (not just any other party) has interconnected.[113] CompTel argues that AT&T should be required to pay full access charges, rather than the presumably lower connection charges in LEC offices where AT&T already has a POP, until a CAP is collocated in that office and offering service to the public.[114] MCI generally would require AT&T to pay full access charges at a given central office in which AT&T has an existing POP until another IXC obtains expanded interconnection in that office.[115] AT&T opposes MCI's proposals, arguing that they are a "blatant attempt to impose a regulatory handicap on AT&T to gain impermissible competitive advantage" and would "[deny] consumers the expanded choices and lower prices that competition provides."[116]

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[111] MFS Comments at 7, n.7. By contrast, MFS recognizes that reciprocity is relevant to special access. Id.

[112] USTA Reply Comments at 24.

[113] WilTel Reply Comments at 13-16. According to WilTel, this is necessary to ensure that other carriers have comparable access alternatives. Id. WilTel claims that requiring AT&T to pay for interconnection as if it were not already collocated reduces its unearned advantage, but that other interconnectors still must incur costs that AT&T does not in order to reach the LEC location. Id. at 15-16 n.30.

[114] CompTel Comments on Petitions for Reconsideration at 2; CompTel Ex Parte Letter at 1-2.

[115] MCI Comments at 6-7.

[116] AT&T Reply Comments at 6-7. AT&T contends that the requirements imposed on AT&T in the Special Access Order force the company to forego most of the advantages of its pre-existing collocation and pay the same charges as other interconnectors. Although AT&T does not specifically address in any detail the proposals for additional restrictions on their use of expanded interconnection advanced by parties other than MCI, AT&T's arguments concerning the MCI proposal logically apply to the positions of other parties.

44. Discussion. We require LECs to offer expanded interconnection for switched transport to all interested parties that wish to terminate their own switched transport access transmission facilities at LEC premises, including CAPs, IXCs, and end users. We also require LECs to provide expanded interconnection for switched transport to AT&T and other parties already located in buildings containing a LEC central office under the same terms and conditions established for such parties in the Special Access Order.[117] For the reasons set forth in the Special Access Order,[118] we find that further limitations on AT&T in its ability to use expanded interconnection are unjustified. The measures that we adopted in the Special Access Order force AT&T and other parties already collocated in LEC central offices to forego potential engineering efficiencies and pay the same charges as other interconnectors not previously collocated in the facility.[119] At this time, we will not require CAPs and other interconnectors to provide reciprocal expanded interconnection for interstate switched transport because the LECs have not demonstrated any need for such facilities. Furthermore, CAPs and other interconnectors do not control bottleneck facilities, and CAPs already may provide interconnection voluntarily.

V. STANDARDS FOR INTERCONNECTION ARRANGEMENTS

A. Space Allocation and Exhaustion

45. Notice. In the Notice, we proposed to impose the same standards for switched transport expanded interconnection that we

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[117] Special Access Order, 7 FCC Rcd 7403-05, at ¶¶ 65-68.

[118] Id.

[119] Although previously collocated parties could interconnect from an engineering point of view using only a long cross-connect, in the Special Access Order we imposed substantial additional requirements on AT&T and other parties already located in the same building as a LEC central office in order to ensure that all parties take expanded interconnection under the same terms and conditions. Special Access Order, 7 FCC Rcd at 7403-04 and n.169. Under physical collocation, these parties must rent additional floor space and furnish it with appropriate electronic transmission equipment and fiber optic cable, as well as pay LECs the cost of preparing the interconnector's floor space and the cost of installing fiber optic cabling from the entry point to the interconnector's designated floor space in the LEC central office. Under virtual collocation, these parties must pay for the central office equipment dedicated to their use as well as the cost of fiber optic cable from the entry point to the interconnector's central office equipment. Id. at n.169.

adopted for special access. These include requiring LECs to allocate central office space for switched transport expanded interconnection on a first-come, first-served basis and to provide virtual collocation when space for physical collocation is exhausted. These standards also would allow LECs to include anti-warehousing provisions in their tariffs.[120]

46. Comments. The parties provide no reason for treating switched transport and special access differently although Allnet argues that space allocations for each customer should be limited to avoid individual customers usurping the available space.[121]

47. Discussion. Consistent with our rules for special access, we require LECs to allocate central office space on a first-come, first-served basis. In addition, LECs must provide virtual collocation when space for physical collocation is exhausted. This requirement will help ensure that all potential interconnectors can be accommodated without unduly burdening the LECs. Finally, we permit LECs to include in their tariffs reasonable restrictions on warehousing of unused space by interconnectors.

B. LEC Facilities Subject to Expanded Interconnection

48. Notice. In the Notice, we tentatively concluded that Tier 1 LECs should be required to provide expanded interconnection for interstate switched transport at all end offices, serving wire centers (SWCs), and tandem switches.[122] We also tentatively concluded, however, that LECs should not be required to make expanded interconnection for switched transport available at remote nodes because of obstacles that appear to make infeasible the routing of switched traffic to and from LEC remote nodes or remote switches in host/remote arrangements.[123]

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[120] Notice, 7 FCC Rcd at 7743, ¶ 16. See Special Access Order, 7 FCC Rcd at 7407-08, ¶¶ 77-80.

[121] Allnet Comments at 6.

[122] Notice, 7 FCC Rcd at 7743-44, ¶¶ 19-20. As explained supra at n.60, in the Special Access First Reconsideration Order, we reduced the central offices at which LECs are required to implement special access expanded interconnection and provided a mechanism for interconnectors to request additional offices.

[123] Notice, 7 FCC Rcd at 7744, ¶ 21. We also noted that different considerations may exist with respect to remote nodes for special access and switched transport expanded interconnection. Id. For example, in the Special Access Order, we required LECs to offer interconnection at any remote distribution nodes used as rating points, e.g., a point used in calculating the length of

49. Comments. Several LECs argue that expanded interconnection for switched transport should be required only at a subset of LEC central offices.[124] NYNEX generally supports tariffing of end offices and serving wire centers, subject to pricing reforms.[125]

50. Ad Hoc and Teleport Denver argue that collocation at tandems is necessary because tandem switches provide higher levels of traffic aggregation, and therefore, potentially, serve as a more efficient and cost effective point of switched transport expanded interconnection.[126] MFS proposes that LECs be required to offer collocation at tandems upon bona fide request.[127] NYNEX and SW Bell oppose expanded interconnection at tandem switches, arguing that it would be incompatible with the interim rate structure, which imposes a per-minute rate from the end office, through the tandem,

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interoffice special access links for the purpose of computing distance sensitive charges. Special Access Order, 7 FCC Rcd at 7417, ¶ 103.

[124] Some parties recommend that the parties create a list using the procedure adopted for special access in the Special Access First Reconsideration Order. PacTel Comments at 41-42; Centel Comments at 7-8; United Comments at 5-6; Rochester Comments at 2, 4-6, Teleport Denver Comments at 5-6. US West and USTA, however, suggest that switched transport be tariffed in the same central offices where special access expanded interconnection is available. USTA Comments at 25-26; US West Comments at 36. Cincinnati Bell argues that the list of LEC offices used for special access should be used for switched transport, and that any interconnector that wishes to add to that list must demonstrate bona fide intent and ability to collocate before the LEC is required to prepare an office for collocation. Cincinnati Bell also argues that LECs should be allowed to require an application fee to confirm that the request is bona fide. Cincinnati Bell Comments at 9-10 & n.18.

[125] NYNEX Comments at 8.

[126] Ad Hoc Comments at 9; Teleport Denver Comments at 3-4, 6.

[127] MFS Comments at 7-8 and n.9, Reply Comments at 12. MFS claims that tandems usually aggregate large volumes of traffic and, therefore, it may be economically feasible for a competitor to provide direct-trunked transport from the tandem switch to an IXC's POP, while not economically feasible for a CAP to provide direct-trunked transport to each individual end office served through that tandem. MFS Comments at 7-8.

to the serving wire center.[128] They argue that expanded interconnection at tandems should be postponed until the long term transport rate structure is in effect.[129] According to MFS, however, the interim transport rate structure discourages tandem interconnection, to the disadvantage of interconnectors, not LECs.[130]

51. LECs generally support our tentative conclusion not to require switched transport expanded interconnection at remote nodes for several reasons.[131] First, they agree that many remotes are not capable of properly routing outgoing calls to an interconnector or an IXC.[132] They state that "[r]emote offices are simply not equipped to identify the . . . IXCs to which originating traffic should be routed."[133] Second, hosts and remotes often share NXX codes.[134] Consequently, the LECs argue that interconnectors would not be able to properly route terminating traffic to those locations.[135] Third, LECs allege that remotes are not able to record traffic usage or to provide call set-up because they cannot perform out-of-band (CCS) signalling.[136] In addition, in a remote/host network configuration, the remote location is often unable to perform certain billing and measurement functions that an end office typically performs.[137] Expanded interconnection at remotes for switched transport also would reduce the line capacity

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[128] NYNEX Comments at 8-9; SW Bell Comments at 26-27.

[129] NYNEX Comments at 8; SW Bell Comments at 27.

[130] MFS Reply Comments at 11-12. MFS also notes that demand for tandem interconnection may be limited because of the rate structure adopted in the Transport Order. MFS Comments at 8 n.9.

[131] E.g., BellSouth Comments at 26; GTE Comments at 35-37; OPASTCO Comments at 4-5; NYNEX Comments at 9; PacTel Comments at 49; Ameritech Comments at 23; SW Bell Comments at 28.

[132] GTE Comments at 36; Ameritech Comments at 23; SW Bell Comments at 28; OPASTCO Comments at 4-5. See also NYNEX Comments at 9 n.12 (NYNEX cannot provide direct trunking from remotes because of technical limitations of remotes).

[133] OPASTCO Comments at 4.

[134] E.g., GTE Comments at 36; SW Bell Comments at 28.

[135] E.g., SW Bell Comments at 28.

[136] E.g., Ameritech Comments at 23.

[137] E.g., SW Bell Comments at 28.

at many remotes, which would require costly hardware additions.[138] Finally, the location of remote switches often makes collocation physically "impractical, if not impossible."[139]

52. MFS contends that "[i]nstead of categorizing switching offices as 'hosts' or 'remotes,' expanded interconnection should be required at all switching entities that serve as rating points for switched access if they have the necessary capabilities."[140] Ad Hoc believes that expanded interconnection should be available at

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[138] Ameritech Comments at 23. See also SW Bell Comments at 28. USTA contends that some remotes can be upgraded to provide the necessary routing capability, but only at significant expense, and notes that interconnectors are unlikely to be willing to pay for the upgrade when collocation would be available at the host. USTA Comments at 34 n.77.

[139] PacTel Comments at 49. According to PacTel, some remote switches are located in controlled environment vaults that have limited space, or on customer premises. Id. GTE also argues that the transmission equipment necessary to provide direct dedicated trunking for collocation at remote nodes would occupy space intended for subscriber line equipment. As a result, according to GTE, the number of customers that could be served from the remote site would be reduced, which could necessitate additional investment for a second remote node. GTE Comments at 36-37.

[140] MFS Comments at 9. According to MFS, this approach is necessary because the Commission has not defined what constitutes a "remote node," and consequently, some LECs may more broadly categorize their switches as remote nodes, while some switches categorized as remote nodes may have all the routing capabilities needed for the provision of expanded interconnection. Id. at 8. MFS also notes that the Commission's policy may become obsolete as technology changes and remote switching nodes acquire more sophisticated processing and routing capabilities. Id. at 8-9.

MFS contends that a LEC should be entitled to a waiver of the expanded interconnection requirement when it receives a bona fide request for expanded interconnection at a switching location that lacks the technical capability to provide direct-trunked transport or that does not have a dedicated central office numbering code so that terminating traffic cannot be routed to it. Id. at 9. In addition, according to MFS, there may be "some end office 'host' switches that are unable to provide expanded interconnection because they . . . lack the recording and measurement functions necessary to provide direct-trunked transport in any form." MFS Comments at 9 n.10. MFS states that its "proposed functional approach would allow for exemption of these offices from the expanded interconnection requirement." Id.

all locations where routing capability exists.[141] Ad Hoc argues that the "more ubiquitous the availability of expanded interconnection opportunities, the greater the potential for development of meaningful switched transport competition."[142]

53. Discussion. Central Offices and SWCs. LECs subject to this Order must provide expanded interconnection for switched transport in central offices and serving wire centers identified below.[143] In the Special Access Order, we originally required LECs to provide expanded interconnection for special access in all central offices and SWCs. On reconsideration, however, we reduced the requirement to a subset of offices designated jointly by LECs and interconnectors.[144] The parties support the subset approach and we conclude that implementing expanded interconnection in the same offices for switched transport and special access will yield a more efficient tariff preparation and review process. Therefore, we require LECs to offer expanded interconnection for switched transport in the same LEC locations in which special access expanded interconnection has been tariffed as of the date that the switched transport expanded interconnection tariffs are filed.

54. In conformity with the procedures established in the Special Access First Reconsideration Order,[145] we also require that interconnectors that wish the LEC tariffs filed November 18, 1993 to offer expanded interconnection for switched transport at LEC locations in addition to those already designated for collocation in the special access proceeding, must request those locations by

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[141] Ad Hoc Comments at 9.

[142] Id. BellSouth disagrees with Ad Hoc's contention that expanded interconnection should be made available where routing capability exists, and with MFS's assertion that LECs should seek waivers for any remote nodes at which they cannot provide expanded interconnection. BellSouth Reply Comments at 12. BellSouth argues that although a remote may have a limited routing capability for a few trunks, it must still use the processing intelligence of a host switch, and the number of trunks that can be routed from the remote is very limited. Id. at 12-13.

[143] As we found in the Special Access First Reconsideration Order, the subset approach should benefit interconnectors and LECs, and will allow us to focus Commission resources on implementation of expanded interconnection for switched transport in the LEC locations of interest to interconnectors. Special Access First Reconsideration Order, 8 FCC Rcd at 128, ¶ 8.

[144] Special Access First Reconsideration Order, 8 FCC Rcd at 128-29, ¶¶ 7-18.

[145] Id. at 129, ¶ 13.

October 18, 1993.[146] These requests should be limited to locations at which interconnectors intend to seek interconnection within the twelve months following the effectiveness of the expanded interconnection tariffs for switched transport.[147] Interconnectors also may request expanded interconnection at additional LEC locations between October 18, 1993 and February 15, 1994.[148] LECs also must include in their November 18, 1993 tariffs a procedure for adding LEC locations where expanded interconnection will be offered in response to bona fide requests from interconnectors received after the initial expanded interconnection tariffs become effective.[149]

55. Tandems. We require provision of expanded interconnection for interstate switched transport at tandems, but adopt different implementation rules for two types of tandem

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[146] As explained in the Special Access First Reconsideration Order, 8 FCC Rcd at 129, ¶ 12, this approach is necessary given that LECs must file requests for exemption based on lack of space at the same time that they file tariffs. Id. at 129, ¶ 17. Therefore, we establish a particular date (October 18, 1993) by which interconnectors must request additional locations to be included in the LECs' November tariff filings.

[147] See Special Access First Reconsideration Order, 8 FCC Rcd 129, ¶ 13.

[148] LECs must file any tariff revisions necessary to respond to these requests 45 days after receipt of such a request, effective on 45 days notice. Requests received after October 18, 1993 but on or before November 18, 1993 shall be deemed to have been made on November 18, 1993. As a result, tariff revisions responding to any requests received during this period will not become effective before February 15, 1994 (the date that expanded interconnection will be available in the LEC locations included in the November 18, 1993 filing). If the notice period for the November 18, 1993 switched transport expanded interconnection tariff filing is extended to 120 days, the notice period for the tariff revisions covering additional offices shall also be extended for a comparable period.

At no time are LECs permitted to assess a nonrecurring charge upon interconnectors that submit bona fide requests for additional locations to cover the costs of surveying those locations for space availability. Special Access First Reconsideration Order, 8 FCC Rcd at 129, ¶ 14.

[149] Id. at ¶ 16. The tariffs must provide that tariff revisions adding LEC locations will be filed within 45 days of receipt of a bona fide request, to be effective upon 45 days notice. Id.

offices. First, LECs must tariff expanded interconnection for switched transport at all tandems housed in buildings containing LEC end offices or SWCs where expanded interconnection already has been tariffed. We assume in this situation that interconnectors could use a single cage to access both the end office switch and the tandem switch. In light of this, we anticipate that many parties interconnecting at the LEC end office or SWC will wish to connect to the collocated tandem switch as well. Our decision in the Transport First Reconsideration Order, that access customers may now "order direct-trunked transport between SWCs and access tandems, and tandem-switched transport between access tandems and end offices,"[150] will make interconnectors more likely to take expanded interconnection at the tandem. Thus, we believe that requiring that expanded interconnection be tariffed in these offices at the outset is desirable.

56. Second, LECS must provide expanded interconnection for switched transport in all other tandem offices (e.g., stand-alone tandems or tandems collocated with LEC central offices or SWCs where expanded interconnection has not been tariffed) upon a bona fide request. We find that this approach is sufficient to accommodate interconnector interests, especially given the relatively small number of stand-alone tandems and tandems collocated in buildings with central offices or SWCs where expanded interconnection has not been tariffed. The procedures set forth at paragraph 54, above, will apply to the tariffing of expanded interconnection in tandem offices in response to .bona fide requests.

57. Remote Nodes. Upon a bona fide request, LECs must provide expanded interconnection at remote nodes/switches that serve as rating points for switched transport and that have the necessary space and technical capabilities. Interconnectors requesting expanded interconnection at remotes, and LECs that provide it, must follow the procedures set forth above at paragraph 54. The LEC requirement to provide expanded interconnection applies only to remote nodes/switches that can route outgoing interexchange access traffic to interconnectors and in which interconnectors can route terminating traffic to the LECs. LECs are not required to enhance remote nodes/switches or to build additional space to accommodate interconnection at these locations. This approach will ensure that collocation is available to interconnectors where remote nodes perform functions similar to those of a central office without overly burdening LECs.[151]

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[150] Transport First Reconsideration Order, supra n.59, at ¶ 9.

[151] Given that LECs and interconnectors expect that demand for expanded interconnection initially will be limited to a subset of LEC central offices, there is no reason to adopt a broader

C. Points of Interconnection and Entry

58. Notice. In the Notice, we proposed to require LECs to specify interconnection points as close as reasonably possible to a central office. We also proposed to require LECs to provide interconnectors at least two points of entry to each office when there are at least two entry points for LEC cable.[152]

59. Comments. Ad Hoc and MFS contend that we should apply the same standards as in the Special Access Order for points of interconnection.[153] NYNEX supports the two entry point proposal as long as the rules adopted are sufficiently flexible to permit LECs to resolve space limitation problems with collocators.[154] GTE argues that the two entry point requirement should not apply if only one entrance point has space available for additional cables. According to GTE, in many of its central offices, the original cable entry point has reached capacity and GTE has constructed another one. In those situations, GTE contends, LECs should not be required to invest in rearrangements of existing cables to provide room for new interconnectors' cables.[155] USTA also requests that LECs not be required to construct new entry points or to re-route their own traffic to accommodate collocators.[156]

60. Discussion. As discussed in the Special Access Order, we require LECs to provide an interconnection point or points as close as reasonably possible to the LEC location (i.e., central office, SWC, tandem, or remote node).[157] The interconnection points must be the same points for both switched and special access. In addition, to ensure equitable treatment of all parties, interconnection points must be physically accessible by both the LEC and interconnectors on nondiscriminatory terms. In the Special

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collocation requirement at remote nodes.

[152] Notice, 7 FCC Rcd at 7743, ¶ 16. See Special Access Order, 7 FCC Rcd at 7409-12, ¶¶ 84, 85, 89.

[153] Ad Hoc Comments at 8; MFS Comments at 6.

[154] NYNEX Comments at 6.

[155] GTE Comments at 32. GTE recognizes, however, that LECs may replace large copper cables with fiber systems that use much smaller diameter cables, thereby vacating space in existing conduit or riser facilities. Id. at 32 n.40.

[156] USTA Comments at 28 n.61.

[157] See Special Access Order, 7 FCC Rcd at 7409-10, ¶ 84 and n.201.

Access Order, we required LECs to provide at least two separate points of entry to LEC facilities for purposes of expanded interconnection whenever there are at least two entry points for LEC cable.[158] We found for special access that this requirement is necessary to ensure that interconnectors that desire reliability can obtain redundancy. After reviewing LEC tariff filings, however, in the Special Access Tariff Order, the Common Carrier Bureau concluded that the original Special Access Order does not address instances where there are two or more LEC entry points but all but one are at capacity.[159] The Bureau found that in that situation, it would be unreasonable to require the LEC to rearrange its facilities to permit an interconnector access to two entry points until this issue is reviewed on reconsideration.[160] We believe that the entry point standard for switched transport should be treated the same as that for special access pending reconsideration of this issue in the special access portion of this proceeding. Therefore, while we promulgate the same rule here as for special access, we will waive the application of that rule pending reconsideration of the special access order on this issue. Accordingly, pending such reconsideration, LECs must provide at least two separate points of entry to LEC facilities for purposes of expanded interconnection whenever there are at least two entry points for LEC cable, unless all but one of the LEC entry points are filled to capacity, in which case an interconnector would be entitled to only one entry point.[161] Following reconsideration of the two-entry point standard for special access expanded interconnection, LECs will be subject to the same rule for switched transport expanded interconnection as that prescribed in the special access reconsideration order.

D. Equipment Placed in Central Offices by or for Interconnectors

61. Notice. In the Notice, we proposed to treat switched transport expanded interconnection the same as special access by

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[158] Id. at 7411-12, ¶ 89.

[159] Ameritech Operating Companies, Order, CC Docket No. 93-162, 8 FCC Rcd 4589, 4605 (1993) (Special Access Tariff Order).

[160] Id. at 4605, ¶ 91.

[161] This interim treatment should not be interpreted as indicating the Commission's resolution of this issue on reconsideration.

As we provided in the Special Access Order, 7 FCC Rcd at 7411 n.210, even if a LEC has more than two entry points for its own cable, it does not have to offer more than two points of entry to interconnectors.

limiting interconnectors' collocation rights to transmission equipment, including optical terminating equipment, multiplexers, and microwave facilities.[162] We proposed to prohibit interconnectors from collocating other types of equipment such as interconnector switches, computers used for providing enhanced services, or customer premises equipment.[163]

62. Comments. MFS, SW Bell, NYNEX, and PacTel concur with our proposal to limit collocation to transmission equipment.[164] PacTel contends that a "fundamental purpose of expanded interconnection for switched transport is to allow interconnectors to use LEC switches without having to purchase the LECs' end-to-end switched access services. If interconnectors want to do their own switching, they may place switches on their own property."[165] Ad Hoc, however, favors a collocation requirement for non-transmission equipment, arguing that space and other LEC concerns can be addressed.[166]

63. Discussion. Consistent with the Special Access Order, we limit expanded interconnection for switched transport to transmission equipment.[167] LECs are not required to provide collocation of enhanced services, customer premises, or other non-transmission equipment. As in the case of special access, the purpose of expanded interconnection for switched transport is to remove barriers to competition in the provision of basic transmission services between LEC central offices and third-party facilities. Collocation of non-transmission equipment is not related to the competitive provision of basic transmission services. In addition, we agree with PacTel that interconnectors

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[162] Notice, 7 FCC Rcd at 7743, ¶ 17. See Special Access Order, 7 FCC Rcd at 7413-14, ¶¶ 93-94.

[163] Id. In Phase II of this proceeding, however, we sought comment on an IDCMA proposal to permit collocation of customer equipment to be connected to LEC-provided transmission facilities. Notice, 7 FCC Rcd at 7748, ¶ 49.

[164] MFS Comments at 6; SW Bell Comments at 29-30; PacTel Comments at 46-48; NYNEX Comments at 7-8.

[165] PacTel Comments at 46-47. PacTel also notes that switches would occupy considerable amounts of central office space and that they have particular characteristics (e.g., higher heat dissipation and power requirements) that would require environmental modifications and additional space, and would increase LEC costs. Id.

[166] Ad Hoc Comments at 8.

[167] Special Access Order, 7 FCC Rcd at 7413-14, ¶¶ 93-94.

need not place their own switches on LEC premises to gain the benefits of expanded interconnection. Thus, LECs will not be required to allow interconnectors to collocate switches in LEC locations.

E. Interconnection of Non-Fiber Technologies

64. Notice. In the Notice, we tentatively concluded based on the Special Access Order that LECs must provide switched transport expanded interconnection for microwave facilities where reasonably feasible.[168] We also stated that the standards that we adopted for special access should apply to switched transport, which includes our decision to not require interconnection of non-fiber optic cable facilities (e.g., coaxial cable).[169]

65. Comments. NYNEX and MFS generally support our microwave collocation proposal.[170] NYNEX, however, argues that the rules should be flexible because microwave collocation may not be possible where there is limited roof space, zoning restrictions, or other technical barriers.[171] Allnet argues that the LECs should be required to offer mid-air microwave meets subject to penalty provisions for failing to deliver such facilities within the required period of time.[172]

66. PacTel opposes interconnector access to LEC facilities for placement and maintenance of microwave equipment.[173] Several other LECs propose that microwave interconnection should be limited

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[168] Notice, 7 FCC Rcd at 7743, ¶ 16. See Special Access Order, 7 FCC Rcd at 7416, ¶ 98.

[169] Notice, 7 FCC Rcd at 7743, ¶ 16. See Special Access Order, 7 FCC Rcd at 7416, ¶ 99.

[170] NYNEX Comments at 6-7; MFS Comments at 6. Under its intrastate expanded interconnection policy, NYNEX provides collocation for microwave facilities. NYNEX Comments at 6-7.

[171] NYNEX Comments at 6-7.

[172] Allnet Comments at 6. According to Allnet, "in a mid-air microwave meet, the LEC and the interconnecting carrier . . . each provide the microwave tower and antennae at their respective ends of a microwave interconnection hop. The term 'mid-air' means that neither the LEC or the IXC/CAP owns both ends of the microwave hop." Allnet Ex Parte Letter from Roy L. Morris to Donna R. Searcy (June 7, 1993) at 1-2.

[173] PacTel Comments at 43-44.

to bona fide requests.[174] Some also suggest feasibility requirements.[175] Cincinnati Bell asserts that the Cincinnati area is not geographically suited to microwave service.[176] PacTel and United contend that LECs should not be forced to construct facilities to provide a mid-air meet with another carrier.[177]

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[174] Bell Atlantic Comments at 7; PacTel Comments at 43-44; GTE Comments at 28-30; USTA Comments at 28; United Reply Comments at 13-14; US West Comments at 36. For example, GTE argues that once a bona fide request has been made, it may be reasonable to tariff a cross-connect element for microwave facilities in that office, but that other elements would be customer-specific and should be negotiated between the parties and filed for Commission review. GTE Comments at 29 n.36.

[175] See, e.g., US West Comments at 36; USTA Comments at 28; GTE Comments at 28-30; Bell Atlantic Comments at 7. Bell Atlantic argues that provision of microwave expanded interconnection should be limited to situations where feasible. It also argues that interconnectors must satisfy local zoning and licensing requirements. Bell Atlantic Comments at 7.

[176] Cincinnati Bell Comments at 11. Cincinnati Bell also asserts that if microwave interconnection is mandated, interconnectors should be responsible for the costs of making microwave interconnection available. Because Cincinnati Bell has no experience with pricing microwave systems, it argues that pricing should be governed by customer-specific contracts or ICB arrangements. Cincinnati Bell Comments at 11.

[177] PacTel Reply Comments at 32; United Reply Comments at 13-14; United Ex Parte Letter from Jay C. Keithley to Donna R. Searcy (June 4, 1993) (United Ex Parte Letter) at 1. PacTel argues that Allnet's claim is vague and beyond the scope of this proceeding. PacTel Reply Comments at 32. PacTel contends that microwave expanded interconnection would involve interconnector transmission of its POP and its dish on the LEC's microwave tower at a central office. Id. With a mid-air meet, however, ownership of the two microwave facilities differs and responsibility for carriage of the signal is transferred at a mid-air meet point. Thus, PacTel argues that a mid-air meet point serves no purpose regarding expanded interconnection. PacTel Reply Comments at 32. United contends that "mid-air meets of microwave signals would require United to build new microwave facilities or to modify existing facilities." United does not believe expanded interconnection should require LECs to construct microwave facilities to accommodate mid-air meets." United Ex Parte Letter at 1.

67. NYNEX supports our proposal not to require expanded interconnection with copper facilities because they require more space than fiber and are more expensive to install and maintain.[178]

68. Discussion. In the Special Access Order, we required LECs to provide, where reasonably feasible, special access expanded interconnection for microwave facilities. After reviewing LEC tariff filings, however, in the Special Access Tariff Order, the Common Carrier Bureau concluded that microwave interconnection is sufficiently interconnector-specific to warrant tariffing of microwave expanded interconnection for special access on an individual case basis (ICB) in response to bona fide requests and granted a blanket waiver of the tariffing requirements for microwave collocation contained in the Special Access Order, pending reconsideration.[179] We believe that microwave interconnection for switched transport should be treated the same as that for special access pending reconsideration of the microwave issue in the special access portion of this proceeding. Therefore, while special access reconsideration is pending on this issue, LECs must provide in their tariffs that they will establish ICB arrangements in response to bona fide request. Any ICB arrangements for microwave interconnection must be tariffed, and made available to others at that LEC location. Once a LEC has multiple customers for microwave interconnection at a LEC location, it must revise its tariff to make a generic offering for that location.[180] Following reconsideration, LECs will be required to tariff expanded interconnection for switched transport for microwave facilities in the same manner prescribed for special access.

69. LECs are not required to provide expanded interconnection for switched transport for non-fiber optic cable facilities (e.g., coaxial cable). In the Special Access Order, we concluded that given the potential adverse effects of interconnection on the availability of conduit and riser space, interconnection of non-fiber optic cable facilities should be permitted only upon Common Carrier Bureau approval of a showing that such interconnection

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[178] NYNEX Comments at 7.

[179] Special Access Tariff Order, 8 FCC Rcd at 4603, ¶¶ 78-79. The Bureau found that LEC arguments that microwave interconnection does not readily lend itself to uniform tariff arrangements were not contested by interconnectors. Id. at 4603, ¶¶ 78-79.

[180] See Special Access Tariff Order, ¶ 79.

would serve the public interest in a particular case.[181] We adopt this approach for switched transport expanded interconnection.

VI. EXPANDED INTERCONNECTION PRICING AND RATE STRUCTURE

A. Overview

70. In this section, we address the pricing and rate structure issues associated with expanded interconnection services for switched transport. The issues that must be resolved are first, the rate structure and rate levels of the connection charges that interconnectors will pay LECs to cover the cost of interconnection; and second, how the connection charge subelements will be tariffed. We generally find that these issues should be resolved in the same way for switched transport expanded interconnection as for special access expanded interconnection, and will therefore apply the same rules set forth in the Special Access Order, with certain very limited exceptions as discussed below.

B. Pricing of Expanded Interconnection Services

1. Rate Structure

71. Notice and Comments. We tentatively concluded in the Notice that the rate structure for switched transport expanded interconnection should parallel the rate structure adopted for special access expanded interconnection.[182] Parties generally support applying the same rate structure approach to expanded interconnection for both special access and switched transport, although Sprint notes that the rate structure and pricing principles should be modified to reflect any changes made on reconsideration with respect to special access expanded interconnection.[183] LECs note that some additional rate elements may be needed for expanded interconnection for transport.[184]

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[181] Special Access Order, 7 FCC Rcd at 7416, ¶ 99. As with special access, we delegate authority to the Chief, Common Carrier Bureau to act on any such requests regarding switched transport services. This restriction does not apply to non-fiber optic cable used for expanded interconnection of microwave antennas.

[182] Notice, 7 FCC Rcd at 7745, ¶ 26.

[183] Sprint Comments at 2; Ad Hoc Comments at 10; BellSouth Comments at 29-30; CompTel Comments at 10-12; NYNEX Comments at 11-13; SW Bell Comments at 21; Teleport Denver Comments at 5.

[184] BellSouth Comments at 30; PacTel Comments at 48; SW Bell Comments at 21; United Comments at 12; USTA Comments at 31-32.

72. Discussion. We adopt the same basic rate structure rules for expanded interconnection for transport that we adopted in the Special Access Order, subject to the modifications adopted in the Special Access Second Reconsideration Order.[185] Thus, connection charges (including the cross-connect element) for switched transport expanded interconnection services will not be formally unbundled from transmission charges.[186] Instead, the LECs are to establish new connection charge elements for switched transport expanded interconnection.

73. For special access expanded interconnection, we did not impose detailed rate structure requirements, but instead allowed the LECs to establish reasonable rate subelements. As an administrative matter, however, the number of different rate structures used by the LECs has considerably complicated the tariff review process. Consequently, in order to avoid the administrative burden of reviewing numerous new rate structures for switched transport expanded interconnection, we will require that the same basic rate structure be used for both switched transport and special access expanded interconnection. We note that a number of the LECs appear to have contemplated that they would add new rate elements for switched transport expanded interconnection, rather than creating an entirely new rate structure.[187]

74. Many of the connection charge elements that the LECs have created for special access expanded interconnection also should be appropriate for switched transport expanded interconnection arrangements, because the same LEC functionalities are used. In such cases, the LECs should use a single rate element for both special access and switched transport expanded interconnection. To the extent that new connection charges must be created to reflect additional LEC services involved in providing switched

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[185] See Special Access Order, 7 FCC Rcd at 7744, ¶¶ 120-121; Special Access Second Reconsideration at ¶ 61.

[186] Connection charges compensate LECs for the costs of providing physical and virtual collocation. The cross-connect element covers the short cable and related facilities within the LEC central office linking the equipment owned or designated by the interconnector to the LEC distribution frame or its equivalent.

[187] For instance, BellSouth says that the rate structure for switched access expanded interconnection should parallel that for special access expanded interconnection, but that LECs should be allowed to establish additional rate elements to reflect costs of additional activities, such as multiplexing traffic to a standard switch interface level, that exceed those required for special access expanded interconnection. See BellSouth Comments at 30. See also PacTel Comments at 48; SW Bell Comments at 21.

transport expanded interconnection, the LECs should create additional rate elements.

75. In addition, in the Special Access Second Reconsideration Order, we specify certain standards that must be met in order for an expanded interconnection rate structure to be considered reasonable.[188] Those standards will be applied to expanded interconnection for switched transport as well. Thus, the rate structure for expanded interconnection for switched transport must reflect cost causation principles, i.e., the manner in which costs are incurred, in providing expanded interconnection services. The LECs are also to unbundle their rate structures so that interconnectors can purchase only those services that they need.

2. Initial Rate Levels

76. Notice. We tentatively concluded in the Notice that the connection charge pricing policies adopted with regard to special access expanded interconnection should apply also to switched transport expanded interconnection offerings.[189] We also tentatively concluded that the magnitude of connection charges should not vary based on the number or type of interconnected circuits an interconnector has unless the LEC's cost of providing service depends upon the number or type of interconnected circuits.[190] The Notice also raised the issue of whether the cross-connect element and other connection charges should differ for special access and switched transport expanded interconnection.[191] Finally, we sought comment on whether cross-connect charges should differ depending on whether interconnected services are connected to end office switches, SWCs, or tandem switches.[192]

77. Comments. In their comments, parties generally agree that initial rates for connection charges should be set on the same basis for switched transport expanded interconnection as for special access expanded interconnection, and present no reasons why pricing rules should be different for switched transport expanded interconnection.[193] Some LECs assert that switched

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188 See Special Access Second Reconsideration Order, ¶ 61.

189 Notice, 7 FCC Rcd at 7745, ¶ 25.

190 Id. at 7745, ¶ 26.

191 Id. at 7745, ¶ 28.

192 Id.

193 Ad Hoc Comments at 10; Bell Atlantic Comments at 6-8; BellSouth Comments at 29; CompTel Comments at 10-12; GSA Comments at 5-6; NYNEX Comments at 11; Sprint Comments at 2; Teleport Denver

transport expanded interconnection may involve additional costs, such that additional charges or rate elements would be appropriate.[194] They identify a number of specific additional costs, such as the cost of multiplexing where interconnectors choose to connect at speeds other than standard switch interfaces. MFS, however, disputes whether some of the cost differences cited by the LECs are related specifically to the provision of switched transport expanded interconnection.[195]

78. On the issue of whether cross-connect charges should differ depending on whether interconnected services are connected to end office switches, SWCs, or tandem switches, NYNEX argues that LECs should be permitted to reflect any cost differences in their rates, but should have the flexibility to ignore such differences if they are minimal.[196]

79. Discussion. We find no reason to adopt different pricing rules for expanded interconnection for switched transport and special access, and we therefore adopt the same rules for establishing initial connection charge rate levels that we adopted in the Special Access Order.[197] Thus, we require the LECs to develop and justify consistent methodologies for deriving the direct cost of providing similar types of offerings, including expanded interconnection services covered by the connection charge elements. We also require the LECs to justify any deviations from uniform overhead loadings that they propose for pricing connection charges, although we do not specify a particular methodology in advance. Under this approach, if a LEC proposes to price connection charges to reflect fully distributed overhead loadings, we will compare such loadings to the overhead loadings used for other services and require justification for any differences.

80. Differences in connection charges as between special and switched transport expanded interconnection must be cost-justified. Differences in cross-connect charges based on whether interconnected services are connected at end offices, SWCs, or tandem offices must also be cost-justified. Where cost differences are minimal, however, the LEC will have the option to use averaged pricing, for the sake of simplicity. We also require that LECs

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Comments at 5.

[194] Bell Atlantic Comments at 8; BellSouth Comments at 29-30; PacTel Comments at 48; SW Bell Comments at 21; United Comments at 12; USTA Comments at 31-33; US West Comments at 37.

[195] MFS Reply Comments at 9-11.

[196] NYNEX Comments at 12.

[197] Special Access Order, 7 FCC Rcd at 7428-7430, ¶¶ 127-131.

must have a cost justification for any connection charges that vary based on the number or type of interconnected circuits.[198]

81. Sprint urges the Commission to clarify that LECs cannot collect two connection charges when interconnectors use the same facilities for the transmission of both switched and special access traffic.[199] LECs may not, of course, charge interconnectors twice for the same expanded interconnection services. When the same facilities are used to provide expanded interconnection for both special and switched access, such that the LEC incurs no additional costs, the LEC may impose only one charge for the use of those facilities. For instance, if the same central office floor space is used by the interconnector in providing both special access and switched transport expanded interconnection, only one floor space charge may be assessed. To the extent that additional facilities or services are involved,[200] however, the interconnector may be charged for additional connection charge subelements.

3. Subsequent Rate Changes

82. Notice and Comments. We proposed in the Notice that, as with special access, subsequent changes in connection charge rates for expanded interconnection for switched transport would be excluded from price cap regulation, pending further Commission action.[201] Parties generally supported applying the same approach to both switched transport and special access expanded interconnection.[202]

83. Discussion. As with expanded interconnection for special access,[203] we will exclude changes in connection charges from price cap review, at least for an initial period. We designate expanded interconnection for switched transport services covered by connection charges as services that are excluded from the LECs'

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[198] Thus, for example, per-unit floor space charges should not vary based on the number of interconnected circuits.

[199] Sprint Comments at 5.

[200] See ¶ 77, supra.

[201] Notice, 7 FCC Rcd at 7744, ¶ 25.

[202] Ad Hoc Comments at 10; Bell Atlantic Comments at 6-8; BellSouth Comments at 29-30; CompTel Comments at 10-12; NYNEX Comments at 11; Sprint Comments at 2; Teleport Denver Comments at 5.

[203] Special Access Order, 7 FCC Rcd at 7432-33, ¶¶ 136-137.

price cap baskets.[204] We will apply non-streamlined tariff review standards to connection charges. After the initial implementation phase, however, connection charges may be sufficiently uniform to permit price cap treatment.

4. Contribution Charges

84. In the Special Access Order, we determined that no contribution charge should apply initially to LEC special access expanded interconnection offerings. In the Transport Order, we defined an interconnection charge to be paid by all parties interconnecting with the LEC switched access network. The interconnection charge recovers transport revenues not recovered through the other transport rate elements.[205] The interconnection charge serves the function of a contribution charge for expanded interconnection for switched transport, and therefore there is no need to create a separate contribution charge.

C. Tariffing

85. Notice and Comments. In the Notice, we proposed to apply to switched transport expanded interconnection the same tariffing standards as for special access expanded interconnection.[206] The few parties that commented agreed that we should adopt the same approach in both instances.[207]

86. Discussion. We now adopt the same tariffing standards for expanded interconnection for switched transport as for expanded interconnection for special access, as modified on reconsideration.[208] Specifically, the cross-connect element is to be generally available at study-area-wide averaged rates, and other features of physical and virtual collocation offerings are to be provided under uniform rates, terms, and conditions for each central office.[209] Under virtual collocation, however, central

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[204] See 47 C.F.R. § 61.42(f).

[205] See Transport Order, supra n.3.

[206] Notice, 7 FCC Rcd at 7745, ¶ 27.

[207] Ad Hoc Comments at 10; BellSouth Comments at 29-30; CompTel Comments at 10-12.

[208] See Special Access Order, 7 FCC Rcd at 7441-47, ¶¶ 155-163; Special Access Second Reconsideration Order at section IV.

[209] Special Access Order, 7 FCC Rcd at 7443-47, ¶¶ 160-163. We concluded that we had statutory authority to impose tariffing requirements for central office space under Title II of the

office electronic equipment dedicated to an interconnector's use may be provided pursuant to individually negotiated tariff provisions, but such rates, terms, and conditions must be tariffed and made available to other similarly situated interconnectors in the same location on a nondiscriminatory basis.[210]

VII. LEC SWITCHED TRANSPORT PRICING FLEXIBILITY

A. Overview

87. Notice. In the Special Access Order, the LECs were given additional pricing flexibility in the form of density zone pricing to accompany expanded interconnection for special access. In the Notice, we asked parties to comment on whether we should modify our rate structure and pricing rules for transport to ensure that LECs are able to respond adequately to increased competition when expanded interconnection for transport is implemented.[211] We specifically requested comment on density zone pricing, and on volume and term discounts for transport.

88. Comments. Numerous parties, including the LECs, some states, and the Federal Trade Commission's Bureau of Economics, argue that the LECs must have more pricing flexibility when expanded interconnection for transport is implemented.[212] In addition to zone pricing and volume and term discounts, LECs argue that they should be allowed to use contract pricing, flat rates for the SWC-to-tandem link, equivalent pricing for switched and special access, and deaveraged local switching and interconnection charges.

Communications Act because central office space for physical collocation is "incidental" to communications service and thus falls within the statutory definition of communications, and LEC central office space offerings for physical collocation constitute common carriage. See Id. at 7444-45, ¶¶ 162-163. The same reasoning and conclusions apply to the use of LEC floor space under physical collocation for the provision of switched transport.

[210] See Special Access Second Reconsideration Order at ¶¶ 56-59.

[211] Notice, 7 FCC Rcd at 7746, ¶¶ 32, 35.

[212] Ameritech Comments at 5-14; Bell Atlantic Comments at 3-5; BellSouth Comments at 21-26, Reply Comments at 5-11; California Reply Comments at 4; FTC Bureau of Economics Reply Comments at 30-31; GSA Reply Comments at 2-5; GTE Comments at 2-12, 22-23, Reply Comments at 9-14; ITAG Comments at 7-9; NYNEX Comments at 14-17, Reply Comments at 5-10; PacTel Comments at 14-26; Rochester Comments at 7-11; United Comments at 7-12; SW Bell Comments at 17-18; USTA Comments at 4-15; US West Comments at 12-14, Reply Comments at 5-6.

LECs also assert that they should be subject to no DS3-to-DS1 benchmarking restrictions. In addition, USTA presents an access reform proposal under which four new price cap baskets would be created, no rate elements would be codified, except in a "public policy" basket,[213] and the degree of regulation would be tailored to the competitiveness of the market area.[214] LECs argue that additional pricing flexibility will not harm interexchange competition, and that the CAPs do not need special protection in order to foster access competition.

89. Some parties, however, argue that the LECs have all the flexibility that they need under price caps, and that additional flexibility is not justified in light of the LECs' market power.[215] MFS, for instance, argues that additional pricing flexibility would prevent detection of cross-subsidization, discrimination, and exploitation of captive customers.[216] MCI asserts that additional pricing flexibility would harm both access competition and interexchange competition.[217] Ad Hoc argues that any additional upward pricing flexibility would harm captive customers.[218] CompTel contends that the additional pricing flexibility sought by the LECs is not economically justified and would be anticompetitive in light of AT&T's market power.[219]

90. Discussion. We conclude that some additional LEC pricing flexibility is both warranted and necessary when expanded interconnection for switched transport is implemented. Under the existing price cap rules, the LECs have a certain degree of pricing flexibility. Nevertheless, the rules governing the pricing of transport services, even for price cap LECs, do not allow the LECs sufficient ability to respond to growing access competition, particularly in light of our expanded interconnection policies. First, the current requirement of study area-wide rate averaging forces the LECs to price above cost in the high-traffic, lower-

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[213] Such a "public policy" basket would contain, according to USTA, "any elements established for public policy purposes, such as high cost support, where all interstate service users would contribute." USTA Reply Comments at 15. (emphasis in original)

[214] USTA Reply Comments at 14-18.

[215] Ad Hoc Reply Comments at 16-19; MCI Comments at 4-5; MFS Comments at 9-13; Teleport Comments at 12-13.

[216] MFS Reply Comments at 16-20.

[217] MCI Comments at 4-5.

[218] Ad Hoc Comments at 12.

[219] CompTel Reply Comments at 3-8.

cost areas where competition is most likely to develop. In addition, the LECs are currently prohibited from offering any volume or term discounts in their transport rates, even if those discounts are cost-justified.[220] Retention of this blanket prohibition would unduly restrict LEC responses to competition.

91. As discussed below, we are granting the LECs additional flexibility in the form of density zone pricing, and volume and term discounts. These measures represent a substantial but measured step in giving the LECs the ability to respond to competition, striking a reasonable balance between giving the LECs too little pricing flexibility or too much. Too much flexibility could stifle competitive entry and harm customers of less competitive services. Too little, though, could deprive customers of the benefits of competition and send false economic signals to new entrants.

92. It is also important that additional LEC pricing flexibility be implemented in a phased, orderly fashion that reflects the implementation of expanded interconnection. If pricing flexibility were not related to the implementation and subsequent development of expanded interconnection, LECs might not have an incentive to act cooperatively in the implementation of expanded interconnection. If pricing flexibility were delayed for too long, however, the full benefits of competition would be delayed, and false economic signals sent to new entrants. The schedule that we adopt here for the implementation of additional LEC pricing flexibility reasonably balances these competing considerations.

93. We will, accordingly, proceed in stages to remove restrictions on LEC transport pricing flexibility, first allowing density zone pricing, and then volume and term discounts. Zone pricing will be permitted, as for special access, when expanded interconnection first becomes operational in a study area. Volume and term discounts generally will be permitted when either 100 DS1-equivalent cross-connects have been taken in the "zone 1" offices in the study area, or an average of 25 DS1-equivalent cross-connects per zone 1 office have been taken.[221] Thus, volume and term discounts will be permitted at the point when activity in the marketplace has further demonstrated that the LECs' expanded interconnection tariffs provide a viable competitive opportunity.

94. We recognize that even with density zone pricing and volume and term discounts, the LECs will be subject to pricing restrictions that do not affect their competitors. Nevertheless, it is prudent to proceed with measured steps during this initial

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220 See 47 C.F.R. §§ 69.110(e) and 69.112(e).

221 See additional requirements in ¶ 119, infra.

stage of switched access competition. Additional flexibility may be justified in the future as competition develops. As we did in the Special Access Order, we reserve the question of broader pricing and rate structure flexibility for future proceedings.[222]

B. Density Zone Pricing

95. Notice. We expect that implementation of expanded interconnection for transport will significantly increase the competition faced by LECs in the provision of access services. Therefore, in the Notice, we sought comment on whether the density zone pricing structure that we adopted for special access should be applied to switched transport when expanded interconnection for transport is operational in a particular study area.[223] We proposed to allow LECs with operational expanded interconnection arrangements implemented in compliance with our rules to set rates for entrance facilities, direct-trunked, and tandem-switched transport that are averaged within zones, but differ between zones.

96. Comments. The majority of commenters endorse density zone pricing for transport, although some LECs argue that they should have more flexibility than the proposal would allow.[224] LECs ask for less restrictive price cap treatment; zone pricing permitted immediately upon general implementation of expanded interconnection, rather than when an interconnector takes expanded interconnection; and zones defined by reference to competitive conditions rather than density. In addition, Allnet argues that direct-trunked and tandem-switched rates within a zone should be linked, such that if direct-trunked transport rates are lowered within a zone, tandem-switched transport rates must be lowered by the same percentage.[225]

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[222] Special Access Order, 7 FCC Rcd at 7457, ¶ 186.

[223] Notice, 7 FCC Rcd at 7746, ¶¶ 32-33.

[224] Ameritech Comments at 11-12; BellSouth Comments at 22-23; CompTel Comments at 6-7, Reply Comments at 6; EDS Comments at 6; GSA Comments at 6; GTE Comments at 21-22; NYNEX Comments at 14-15, Reply Comments at 8; PacTel Reply Comments at 4; Rochester Comments at 10; Sprint Comments at 4; SW Bell Comments at 20-21; USTA Comments at 8-10; WilTel Reply Comments at 9-10. See also Allnet Comments at 6-7 (supports density zone pricing so long as it is "not discriminatory vis a vis access customers in the same zone.")

[225] Allnet Comments at 6-7.

97. Ad Hoc and MFS, though, oppose density zone pricing.[226] MFS says that it should not be allowed until someone other than a party that was already physically collocated on September 17, 1992 has taken expanded interconnection.[227] Some states express concern about the impact of deaveraging on rural areas, and some parties urge the Commission to prohibit geographic deaveraging of toll rates.[228]

98. Discussion. Study area-wide rate averaging forces LECs to price above costs in high-traffic urban areas where costs tend to be lower and where competition is most intense. Such a pricing umbrella could deprive customers of the benefits of more vigorous competition, and undermine efficiency by preventing the LECs from competing effectively, even when they are the low-cost provider. In the Special Access Order, we addressed this problem by creating a density zone pricing plan that allows some degree of deaveraging of interstate special access rates. These concerns about rate averaging are equally applicable with respect to switched transport, and therefore we now adopt density zone pricing for transport under the same terms as for special access.[229]

99. LECs with operational switched transport expanded interconnection arrangements implemented in compliance with the Commission's rules will be permitted to set rates for entrance facilities, direct-trunked, and tandem-switched transport that are averaged within zones, but differ between zones.[230] Density zone

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[226] Ad Hoc Reply Comments at 17; MFS Comments at 11-12, Reply Comments at 20-22 (MFS is opposed to any additional pricing flexibility for the LECs, but finds density zone pricing "the least objectionable form of pricing flexibility.")

[227] In most cases, only AT&T would have been physically located in the same building as the LEC prior to September 1992.

[228] Missouri Comments at 7-8; NARUC Comments at 10-11; Alabama Reply Comments at 10. OPASTCO Reply Comments at 10-12; NRTA Comments at 9-11; NTCA Comments at 5-7; TDS Telecom Comments at 3-5.

[229] See Special Access Order, 7 FCC Rcd at 7451-58, ¶¶ 172-186.

[230] A switched transport expanded interconnection offering will be deemed operational for this purpose when an interconnector has taken the expanded interconnection cross-connect element for switched transport, or used facilities collocated pursuant to the Commission's expanded interconnection rules to interconnect with LEC-provided switched transport services. We clarify that an interconnector will be deemed to have taken the cross-connect element when it has ordered the cross-connect and the LEC has

pricing also will be applicable to dedicated signalling transport.[231] Density zone pricing will not, however, be applied to the transport interconnection charge. As discussed below, the same density zones created for special access will be used for switched transport zone pricing as well.[232]

100. We find that density zone pricing will not have an undue adverse impact on rural areas. The price cap rules described below will limit the magnitude of rate differentials and introduce them gradually to avoid harming customers in higher cost areas. Moreover, the impact on rural areas will be limited by the fact that the interconnection charge, which accounts for the majority of LEC transport revenues, will not be subject to density zone pricing. As with density zone pricing for special access, we will monitor this system closely to ensure that it does not produce undesirable results, and will review its application to both price cap and rate of return LECs in the autumn of 1995.[233] This review will allow us to make any adjustments that may be warranted.

101. Finally, we will not in this proceeding tie together direct-trunked and tandem-switched transport rates in the way that Allnet requests. That issue is more appropriately resolved in our proceeding on transport rate structure and pricing, where the relationship among the prices of various transport rate elements is to be addressed.[234] In the Transport Order, we required price cap LECs to put direct-trunked and tandem-switched transport rates

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provided this service.

[231] Dedicated signalling transport is the transmission of out-of-band signalling information between a LEC's common channel signalling (CCS) network and the CCS network of an IXC or other party. In the Transport Order, the Commission created a transport rate element for Dedicated Signalling Transport. Transport Order, 7 FCC Rcd 7006, at 7052-53, ¶¶ 99-102. We sought comment in the Notice on whether density zone pricing should apply to dedicated signalling transport. 7 FCC Rcd at 7746, ¶ 33. The only parties to comment argue that dedicated signalling transport should be subject to the same pricing rules as other types of transport. See BellSouth Comments at 22-23; Sprint Comments at 4.

[232] As with special access, the LEC will be responsible for ensuring that its density zone pricing tariff for transport does not become effective before switched transport expanded interconnection is actually operational, as defined in n.230, supra, in the affected study area. See Special Access Order, 7 FCC Rcd at 7456 n.419.

[233] See Special Access Order, 7 FCC Rcd at 7457, ¶ 184.

[234] See Transport Order, supra n.3.

into separate service categories with separate pricing bands. We do not in this Order make any change in the price cap treatment of those services.[235]

1. Selection of Density Zones

102. Notice. In the Notice, we proposed that LECs would use the same zones for density pricing of both transport and special access.[236] We proposed that if a LEC had not established density pricing of special access but wished to do so for transport, then it must follow the standards and procedures governing the creation of zones adopted in the Special Access Order.[237]

103. Comments. Some LECs argue that they should be allowed to use different density zones for pricing switched and special access. PacTel argues that the relevant density considerations will vary as between switched and special access.[238] Cincinnati Bell and GTE, though, argue that pricing zones should be based on competitive conditions, not density, and that competitive conditions will vary as between switched and special access.[239] Sprint and MFS argue that the LECs should be required to use the same zones.[240]

104. Discussion. We require the LECs to use the same density pricing zones for both special access and switched transport. PacTel asserts that the relevant density considerations will vary between special and switched access. We concluded in the Special Access Order, however, that density zones should not be defined by reference to special access alone. We required LECs, in classifying central offices, to consider factors such as the density of total interstate traffic including switched access, which more accurately reflects cost patterns than special access alone.[241] Thus, the zones created for special access already

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235 See Transport Order, 7 FCC Rcd at 7043, ¶ 75.

236 Notice, 7 FCC Rcd at 7746, ¶ 33.

237 See Special Access Order, 7 FCC Rcd at 7454-55, ¶¶ 179-180.

238 PacTel Comments at 23.

239 Cincinnati Bell Comments at 7-9; GTE Comments at 12-14.

240 Sprint Reply Comments at 3-4; MFS Reply Comments at 22.

241 Special Access Order, 7 FCC Rcd at 7454 n.415.

reflect switched traffic.[242] In addition, administering two different sets of zones would be confusing and administratively burdensome. Accordingly, the same density zones must be used for both special access and switched transport.[243]

2. Application of Price Cap Rules

105. Notice. In the Notice, we proposed that price cap LECs create a subindex for direct-trunked transport rates, a subindex for tandem-switched transport rates, and a subindex for entrance facility rates in each of the density zones. We proposed that the initial level of each of the subindexes be set at the pre-existing level of rates at the time transport density pricing tariffs become effective.[244]

106. Under the Notice proposal, price cap LECs could raise rates in each zone by up to 5% annually relative to the price cap index applicable to the traffic sensitive basket, and could lower rates by up to 10% annually relative to that price cap index, without triggering any of the additional cost justification or advance notice requirements of the price cap rules. Price cap LECs could not, however, raise or lower the weighted average of all direct-trunked transport or entrance facilities rates by more than

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[242] Some parties argue for zones based on competitive conditions rather than density. Such arguments, however, are appropriately treated on reconsideration of the Special Access Order.

[243] To the extent that LECs use the same density zones already in place for their special access services, we will not require that they file density pricing zone plans in advance of filing tariff changes. Where a LEC is establishing density zones for the first time, however, the guidelines set forth in the Special Access Order for defining density zones will apply. See Special Access Order, 7 FCC Rcd at 7454 n.415. In such cases, the LEC must file and obtain advance approval of its plan, including illustrative tariff pages, as was required for the implementation of zone pricing for special access. See Special Access Order, 7 FCC Rcd at 7455, ¶ 180. As with special access, once a plan is approved, the LEC may file implementing tariff revisions on 31 days notice. In order to reduce administrative burdens and the potential that density zone tariffs could become effective prematurely, the LECs are not to file tariff revisions more than 31 days before their interconnection offering becomes operational. It shall be the responsibility of the LEC to ensure that its density pricing zone tariff does not become effective before expanded interconnection is actually operational in the affected study area.

[244] Notice, 7 FCC Rcd at 7746, ¶ 33.

5% per year adjusted for the price cap index for the traffic sensitive basket without additional cost justification. The weighted average of all tandem-switched transport rates could not be raised by more than 2%, or lowered by more than 5%, adjusted for the price cap index, without additional justification. Thus, transport services would be subject to two layers of pricing bands: (1) +5/-5% at the service category level for direct-trunked transport and entrance facilities, or +2/-5% at the service category level for tandem-switched transport, and (2) +5/-10% within a zone.[245]

107. Comments. Some LECs and WilTel argue that having layers of pricing bands at both the zone and service category levels will be too restrictive.[246] GTE and WilTel argue that the Commission should eliminate the service category pricing bands, so that, for instance, the LECs would have the full +5/-10% pricing flexibility within each zone for direct-trunked transport, without being constrained to stay within the +5/-5% bands for the direct-trunked transport service category as a whole.[247] Ameritech proposes that the Commission apply its existing price cap rules, permitting the LECs to raise or lower rates within the transport category of the traffic sensitive basket by 5% annually relative to the price cap index, with no separate service category price bands below the aggregate transport level.[248] In addition, United argues for zone level price bands of +10/-20%, and PacTel recommends zone price bands of +15/-15%.[249]

108. MCI, however, argues that the price cap bands for zone pricing are essential in limiting the LECs' ability to abuse their market power.[250] MCI says that removal of the price cap bands would lead to unconstrained strategic pricing by the LECs.

109. Discussion. We adopt price cap rules as proposed, with pricing bands at both the service category and zone levels. Both of these price bands serve important policy goals. First, zone pricing bands limit the magnitude of rate differentials between

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[245] Notice, 7 FCC Rcd at 7746, ¶ 34.

[246] Ameritech Comments at 12; GTE Comments at 19-20, Reply Comments at 12; NYNEX Comments at 18-19; PacTel Comments at 16-24; United Comments at 8-11; US West Reply Comments at 8; WilTel Reply Comments at 10.

[247] GTE Comments at 19-20; WilTel Reply Comments at 10.

[248] Ameritech Comments at 11-12.

[249] United Comments at 10-11; PacTel Comments at 23.

[250] MCI Reply Comments at 6.

zones and permit their gradual introduction so that customers in higher cost areas are not harmed.[251] Without zone pricing bands, the LECs could greatly reduce prices in one zone, while drastically increasing them in another, and still satisfy the service category price bands.

110. Service category bands are also needed. Some parties complain that the service category bands, when added to the zone bands, will encourage the LECs to raise rural prices so that rate reductions in competitive zones do not cause below-band filings at the service category level. Service category bands were first created in the Transport Order to ensure that the LECs would not be able to decrease direct-trunked transport rates by raising tandem-switched rates,[252] and should be retained for that purpose. Moreover, contrary to the arguments of some parties, the operation of the service category level bands does not unfairly create upward pressure on rates in the less dense zones, but merely brings rates more in line with underlying costs.

111. To summarize, we require that price cap LECs implementing density zone pricing for transport create two subindexes in each of the density zones, one for tandem-switched transport rates, and another for direct-trunked transport, entrance facilities, and dedicated signalling transport. Thus, for instance, if a LEC created three density zones, it would establish six new subindexes for transport: one in each zone for the service category containing direct-trunked transport, entrance facilities, and dedicated signalling transport, and one in each zone for the tandem-switched transport service category.[253] The initial level of each of the

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[251] As noted above in ¶ 18, we reaffirm our strong commitment to geographic rate averaging, and conclude that density zone pricing should not cause geographic deaveraging of Message Toll Service (MTS) rates.

[252] 7 FCC Rcd at 7043.

[253] The Notice proposed that direct-trunked transport and entrance facilities be in separate service categories, each with its own zone subindexes. Notice, 7 FCC Rcd at 7746, ¶ 33. In the Transport Order, however, direct-trunked transport and entrance facilities, along with dedicated signalling transport, were put into a single service category, because the Commission concluded that the LECs are unlikely to offset decreases in entrance facilities charges with increases in direct-trunked transport charges, or vice versa. Transport Order, 7 FCC Rcd at 7043, 7053, ¶¶ 75, 102. We here follow the service category treatment established in the Transport Order, and therefore the rules we adopt in this Order differ from the Notice proposal to that extent. Thus, direct-trunked transport and entrance facilities will be in the same service category with one set of zone subindexes.

subindexes will be set at the pre-existing level of rates at the time density pricing transport tariffs become effective.

112. Price cap LECs will be permitted to raise rates in each zone by up to 5% annually, or lower them by up to 10%, relative to the price cap index applicable to the traffic-sensitive services basket, without triggering any of the additional cost justification or advance notice requirements of the price cap rules.[254] The weighted average of all rates in the same service category, however, will still be subject to the pricing bands for that service category. Thus, for instance, the weighted average of all tandem-switched transport rates could not be raised by more than 2%, or lowered by more than 5%, adjusted for the price cap index, without additional justification.

C. Volume and Term Discounts

113. Notice. In the Notice, we sought comment on whether the LECs should be allowed to offer volume and term discounts for switched transport in a given study area once expanded interconnection is operational.[255]

114. Comments. Most parties, except CAPs, agree that the LECs should be allowed to offer at least some discounts. Some parties argue that the Commission should allow volume and term discounts, on both entrance facilities and interoffice facilities (which include direct-trunked and tandem-switched transport).[256] The LECs

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[254] We also deny requests for broader zone price bands. As we have already explained, the +5%/-10% bands implemented here and in the Special Access Order will ensure that rate differentials are introduced gradually to avoid harming customers in higher cost areas.

We are creating a similar system for LECs subject to rate of return regulation that implement expanded interconnection. In the case of these LECs, we will permit the rates for the same services in different zones to diverge by a maximum of 15% in the first year that these tariff revisions are in effect, 30% in the second year, and 45% in the third year.

[255] Notice, 7 FCC Rcd at 7746, ¶ 35.

[256] Ameritech Comments at 8-11; BellSouth Reply Comments at 8-9; California Reply Comments at 4; Cincinnati Bell Comments at 4; EDS Comments at 6; GSA Comments at 6; GTE Comments at 16-18, Reply Comments at 10-11; Rochester Comments at 11, Reply Comments at 4-5; SNET Comments at 4; SW Bell Comments at 10-12; Teleport Denver Reply Comments at 5; USTA Comments at 6-8, Reply Comments at 6-8; US West Comments at 15-17, Reply Comments 3-5.

argue that their discounts are cost-justified, and that they cannot be expected to compete against either the CAPs or self-provisioning by IXCs unless they are permitted to offer these discounts. Small and medium IXCs would allow volume discounts for entrance facilities, but not interoffice transport, arguing that only entrance facilities are really dedicated to the use of a single customer.[257] CompTel also argues that volume discounts on interoffice facilities would uniquely benefit AT&T because of its traffic requirements, and would therefore be discriminatory in practice. CompTel would allow term discounts on both entrance facilities and interoffice transport, so long as they do not "discriminate" between tandem-switched and direct-trunked transport users.[258] MCI and Sprint, however, would allow term discounts only for entrance facilities, not interoffice transport, because they assert that the interoffice network is shared and no facilities are dedicated to the use of a single customer.[259] MFS challenges the lawfulness of current LEC special access discounts, arguing that they are not cost-based, and urges that there be no volume, term, or capacity discounts at all for transport beyond those reflected in DS3 rates.[260]

115. Discussion. We will allow the LECs to offer reasonable volume and term discounts on entrance facilities and interoffice facilities, including pricing that reflects speeds greater than DS3. As a general matter, if volume and term discounts are justified by underlying costs, and are not otherwise unlawful, the LECs should -- indeed, must -- be allowed to offer them in order to encourage efficiency and full competition.[261] As noted above,

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Some parties also specifically assert that LECs should be allowed to offer transport services with speeds greater than DS3 (such as SONET) at rates that reflect the economies of providing such services. USTA Comments at 11-12; US West Comments at 17-18. See also MCI Reply Comments at 13-14 (so long as cost savings are shared by all customers). MFS refers to such discounts as "capacity" discounts. See MFS Reply Comments at 22-24.

[257] CompTel Comments at 4-5, Reply Comments at 4; MCI Reply Comments at 8-10; Sprint Comments at 6-7; WilTel Reply Comments at 7-8. These parties generally state that any discounts should be cost-based.

[258] CompTel Comments at 7, Reply Comments at 5.

[259] MCI Reply Comments at 8-10; Sprint Comments at 6-7.

[260] MFS Comments at 12-13.

[261] In the Transport Order, we recognized that some forms of volume and term discounts are reasonable and may be needed in the longer term to ensure that ratepayers receive the benefits of

however, we will proceed in two stages in granting the LECs additional pricing flexibility. Therefore, LECs will be permitted to offer volume and term discounts only when the conditions set forth below have been satisfied.

116. There is little disagreement in the record about whether the LECs should be permitted to offer term discounts, and any IXC can take advantage of discounted rates offered for long-term commitments. As the Commission recognized in the Special Access Order, reasonable term discounts can be a useful and legitimate means of pricing services to recognize the certainty of longer term commitments.[262] The controversy in the record relates mainly to volume discounts. Most commenters, other than the CAPs, agree that volume discounts should be allowed at least on entrance facilities, but a number of parties object to volume discounts for the interoffice portions of transport.

117. LECs will need the ability to offer reasonable volume discounts in order to respond to switched transport competition by interconnectors, and therefore we will permit them to offer such discounts. The smaller IXCs have opposed discounts, because they believe that AT&T would be the greatest beneficiary. Denying the LECs this flexibility, however, will not prevent the larger IXCs from obtaining discounts, either from CAPs or through self-supply, but will only prevent them from getting the discounts from the LECs. Thus, a ban on discounts would disadvantage the LECs without providing small IXCs the benefits they seek to achieve.

118. Subject to the tariff filing date and notice period set out in paragraph 119, LECs will be permitted to implement volume and term discounts on their transport rates in a study area only when one of the following conditions has been met: (1) 100 DS1-equivalent switched transport cross-connects have been taken in the "zone 1" offices[263] in the study area; or (2) an average of 25 DS1-equivalent switched transport cross-connects per zone 1 office

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competition. Transport Order, 7 FCC Rcd at 7035, ¶ 54. At the time that the Transport Order was adopted, however, switched transport expanded interconnection had not yet been mandated.

[262] Special Access Order, 7 FCC Rcd at 7463, ¶ 199.

[263] "Zone 1" offices are the offices classified by the LECs under their density zone pricing plans as having the highest traffic density. See, e.g., BellSouth Telecommunications, Inc., GTE Service Corporation, Lincoln Telephone and Telegraph Co., NYNEX Telephone Companies, Pacific Bell, and Rochester Telephone Corporation Zone Density Pricing Plans, Order, DA 93-726 (released June 18, 1993) (First Zone Density Order).

have been taken.[264] Satisfaction of either of these conditions will provide marketplace evidence that the LECs' expanded interconnection tariffs provide a viable competitive opportunity.[265]

119. LECs will be permitted to file tariffs reflecting volume and term discounts no sooner than December 1, 1993. Transport volume and term discounts, when offered by the LECs, will constitute new services under our price cap rules. Accordingly, tariffs implementing such discounts must satisfy the cost showing requirements for new services. Tariffs are to be filed on 120 days notice, rather than the usual 45 days. This lengthened notice period will allow parties additional time to comment on the tariffs and the accompanying cost support. We emphasize that we will not hesitate to suspend the LECs' volume and term tariffs in whole or

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[264] The two alternative conditions address the fact that some study areas have a substantial number of zone 1 offices, while others have few, or even none. Thus, for instance, in a study area with ten zone 1 offices, discounts could be offered when 100 DS1-equivalent cross-connects had been taken in the zone 1 offices in the study area. In a study area with only three zone 1 offices, discounts could be offered when 75 DS1-equivalent cross-connects have been taken in the zone 1 offices (an average of 25 for each of the three offices). Those cross-connects need not be distributed throughout the study area with 25 in each of the zone 1 offices. The condition is satisfied when 75 cross-connects are taken anywhere in the zone 1 offices.

In the unlikely event that interconnectors take expanded interconnection in zone 2 offices in a particular study area before either of the conditions described above is met, we will consider granting waivers to allow cross-connects taken in zone 2 offices to be counted toward satisfaction of the requirements described in ¶ 118 for that study area. Petitioners must demonstrate, however, that grant of such a waiver would not undermine the policies set forth in this Order, and would be in the public interest. We delegate authority to the Chief, Common Carrier Bureau to act on such requests for waiver. The LECs also may implement volume and term discounts in study areas without any zone 1 offices after 5 DS1-equivalent cross-connects have been taken in the study area.

[265] In the event that a LEC has not implemented density zone pricing, and therefore has no zone 1 offices, volume and term discounts will be permitted in a study area when interconnectors have taken at least 100 DS1-equivalent cross-connects for the transmission of switched transport traffic in offices in the study area. We will delegate authority to the Chief, Common Carrier Bureau, to act on requests for waivers of this requirement. The Bureau shall grant waivers to the extent that a party clearly demonstrates that the specific characteristics of a study area warrant a deviation from this general rule.

in part for the full statutory period if we are not satisfied with the accompanying justification.[266] It shall be the responsibility of the LEC to ensure that its volume and term discount tariffs do not become effective before the conditions set forth above concerning the number of cross-connects taken have been satisfied.

120. NYNEX asserts that it should be permitted to increase the transport interconnection charge to offset revenues lost through the offering of volume and term discounts.[267] The price cap new service rules will not allow for such an increase, however, nor do we find that such an offsetting increase is appropriate. Our price cap rules give the LECs ample opportunity to earn a reasonable rate of return, even absent the increase in the interconnection charge that NYNEX requests.

VIII. OTHER ISSUES

A. "Fresh Look"

121. Background. In the Special Access Order, the Commission created a "fresh look" opportunity to allow customers with long-term LEC arrangements to terminate them once expanded interconnection for special access became operational.[268] Fresh look, as modified on reconsideration,[269] applies to customers with LEC arrangements for terms of three years or longer, entered into on or before the date of adoption of the Special Access Order. These customers are given a 180 day period beginning from the date of public notice of the first operational expanded interconnection arrangement in a central office to terminate their arrangements. In such cases, the termination charge will be limited to the difference between the amount the customer has already paid and any additional charges that the customer would have paid for service if the customer had taken a shorter term offering corresponding to the term actually used. There are currently no long-term arrangements in place for switched transport, which is still subject to the "equal charge" rule.

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[266] If serious problems arise that cannot be resolved before the end of the suspension period, we may also consider application of other sanctions, if appropriate.

[267] Ex Parte letter from Kenneth Rust, Director, Federal Regulatory Matters, NYNEX Government Affairs, to Donna R. Searcy, Secretary, FCC (June 10, 1993).

[268] Special Access Order, 7 FCC Rcd at 7463-64, ¶¶ 201-202.

[269] See Special Access Second Reconsideration Order at ¶¶ 3-41.

122. Comments. The CAPs argue that there should be a second "fresh look" in connection with the implementation of expanded interconnection for transport.[270] MFS contends that the special access facilities subject to term discounts typically carry large volumes of switched traffic as well as special access traffic, because of ratcheting. MFS claims that IXCs have subscribed to high volume, long term special access services in the expectation that their switched traffic will help them to fill these facilities efficiently. Thus, MFS contends that these IXCs are unlikely to move only their switched traffic to another access provider because they need the traffic volume on the mixed use facility. MFS and Teleport also urge that the scope of fresh look be broadened in a number of respects, including a complete ban on any termination liabilities.

123. The LECs were opposed to requiring any fresh look for special access, and most are opposed to expanding the fresh look requirement in any way.[271] NYNEX, though, argues that a limited extension of fresh look to create a second fresh look period for shared use circuits in place before September 17, 1992 may be appropriate.[272]

124. Discussion. In our companion Special Access Second Reconsideration Order, we establish a 180 day fresh look period for mixed use facilities[273] when the first switched transport expanded interconnection arrangement becomes operational in a central office. This additional fresh look period applies only to LEC shared use circuits covered by arrangements with terms of three years or more entered into on or before September 17, 1992, the date on which the Special Access Order was adopted.[274]

125. It appears that, despite the lack of term discounts for switched transport per se, long term special access arrangements have the potential to "lock up" both special and switched access traffic when they are applied to shared use facilities. Since this

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[270] MFS Comments at 13-16, Reply Comments at 24-25; Teleport Comments at 5; Teleport Denver Reply Comments at 3-5.

[271] Bell Atlantic Reply Comments at 3-4; BellSouth Reply Comments at 9-11; Cincinnati Bell Comments at 14-15; USTA Reply Comments at 28-29; US West Reply Comments at 2.

[272] NYNEX Reply Comments at 15.

[273] Mixed use facilities are special access facilities over which both special access and switched transport services are provided.

[274] See Special Access Second Reconsideration Order, ¶¶ 34-37.

additional fresh look option will apply to arrangements for special access facilities carrying ratcheted traffic, not to switched transport arrangements, however, the issue is being addressed in the Special Access Second Reconsideration Order in the special access phase of this proceeding.

B. Nonrecurring Reconfiguration Charges

126. Background. LECs typically impose a nonrecurring charge on customers that reconfigure or rearrange their access services. For instance, a nonrecurring charge would apply if a customer converted from several LEC-provided DS1s to a single LEC-provided DS3. A different, and generally higher, reconfiguration charge typically applies when the reconfiguration involves a change in the point of circuit termination. A shift from LEC facilities to collocated interconnector facilities involves such a change in the point of termination. Parties have raised concerns in both the special access and switched transport phases of this proceeding about the potential competitive effects of these nonrecurring charges.

127. In the Special Access Order, we required that the LECs apply nonrecurring reconfiguration charges in a neutral manner that does not differentiate based on whether the customer chooses to use CAP or LEC facilities for special access service unless there are specific, identifiable cost differences.[275] We recognized that, absent even-handed treatment, nonrecurring reconfiguration charges could constitute a serious barrier to entry.

128. Comments. MFS and Teleport again argue in the switched access context that the LECs should be required to waive nonrecurring charges for customers that want to move their switched access traffic to CAPs, so that customers are not dissuaded from doing so because of the large up-front costs.[276] Teleport argues that the Commission should adopt the principle that it should cost an IXC no more to change access carriers than to stay with the LEC. Teleport also contends that the problem of nonrecurring charges is exacerbated by the fact that the LECs have at times waived the reconfiguration charges that apply when a customer reconfigures its traffic but stays with the LEC, while imposing full rollover charges if the customer switches to a CAP service, increasing even further the incentive to continue with the LEC.

129. The LECs, however, are opposed to a requirement that they waive nonrecurring charges when customers reconfigure to take

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[275] Special Access Order, 7 FCC Rcd at 7465, ¶ 203.

[276] MFS Comments at 16; Teleport Comments at 2-4, Reply Comments at 4.

service from a CAP.[277] The LECs say that these charges recover legitimate costs, and that mandating a waiver would prevent them from recovering costs from the cost causer, amounting to a subsidy for the CAPs. LECs say that a service rollover that requires a change in the point of termination, as would be needed when a customer shifts to CAP services, is significantly more expensive than a reconfiguration that involves no change in circuit termination points. They assert that this is because rollovers require engineering and redesign of circuits, reconstruction of engineering records, and billing changes not involved in simpler reconfigurations.

130. Discussion. In our companion Special Access Second Reconsideration Order, we specify that in order to satisfy the requirement of neutrality, all nonrecurring reconfiguration charges paid by interconnectors or their customers must be set no higher than cost-based levels. In addition, the difference between the charges applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service with the LEC must be cost-based.[278] The same principle of neutrality must be satisfied with respect to expanded interconnection for switched transport in order to ensure that rates are just, reasonable, and nondiscriminatory. Therefore, the requirements set forth in the Special Access Second Reconsideration Order will be applicable to any nonrecurring reconfiguration charges that the LECs apply to switched transport services. As with special access, no presumption of lawfulness will apply to changes made in the nonrecurring charges that apply when customers reconfigure their switched access services. LECs whose tariffs are not already in compliance are to file tariff revisions implementing these standards for switched transport as soon as possible, but in no event later than November 18, 1993.

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[277] Bell Atlantic Reply Comments at 4-5, NYNEX Reply Comments at 15-16, PacTel Reply Comments at 34-38, SW Bell Reply Comments at 21-22, USTA Reply Comments at 32-33.

[278] See Special Access Second Reconsideration Order, ¶¶ 47-51.

C. Interconnection Charge[279]

131. Notice. The interim transport rate structure includes a usage-based interconnection charge to be paid by all interstate access customers that interconnect with the LEC switched access network.[280] The Commission stated in the Phase I Notice that when an IXC buys transport provided by a CAP using expanded interconnection, the interconnection charge could be paid directly by the IXC, or by the CAP, which would then seek to recover the charge from its IXC customer. We tentatively concluded that in the interest of billing simplicity, the IXC should pay the interconnection charge directly to the LEC, rather than indirectly through the CAP.[281] When an end user employs expanded interconnection to carry its switched traffic to an IXC, we tentatively concluded that the IXC should pay the interconnection charge, which it could, of course, pass on to the interconnector.

132. Comments. Most parties disagree with the Commission's proposal, arguing primarily that it is unworkable for terminating traffic.[282] AT&T and several LECs assert that if an interconnector terminates the traffic of several IXCs over a single facility, the LEC cannot tell which minutes of traffic are coming from which IXC and therefore cannot bill the IXC for the per-minute

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[279] In the Transport Order, we defined an interconnection charge to be paid by all parties interconnecting with the LEC switched access network. The interconnection charge recovers transport revenues not recovered through the other transport rate elements, including any support flows that foster universal service reflected in transport charges. The interconnection charge thus serves the function of a contribution charge for subscribers to expanded interconnection for switched transport. Transport Order, 7 FCC Rcd at 7009-7010, ¶ 6.

Some parties commented, as an initial matter, on whether there should be a long-term contribution charge for transport. This issue, however, will be addressed in the Transport proceeding. The Further Notice in that proceeding has already sought comment on what costs are contained in the interconnection charge, and how that charge can be reduced. See 7 FCC Rcd at 7066, ¶ 140.

[280] Transport Order, 7 FCC Rcd at 7009-10, ¶ 6.

[281] Notice, 7 FCC Rcd at 7745, ¶ 30.

[282] AT&T Comments at 13-14; Bell Atlantic Comments at 8; BellSouth Comments at 30-31; GTE Comments at 37-40, Reply Comments at 15-17; Missouri Comments at 8-9; NYNEX Comments at 13; PacTel Comments at 49-50, Reply Comments at 39-40; United Comments at 13-14; USTA Reply Comments at 26.

interconnection charge.[283] Parties argue that either the customer of record for expanded interconnection or the customer of record for switched access should be billed for and pay the interconnection charge.[284] Ad Hoc, Ameritech, and MCI agree with our proposal, although Ameritech says that this will work only if the CAP provides the LEC with IXC-specific usage information for terminating traffic.[285] Sprint also argues that when end users employ expanded interconnection, the IXC should not be required to pay the interconnection charge on their behalf.[286]

133. Discussion. To the extent that CAPs do, in fact, commingle the traffic of several IXCs on a single terminating facility, our proposal that the LEC bill the IXCs directly will not work. We therefore conclude that the customer of record for switched access should be billed for and pay the interconnection charge.[287] The basic question at issue here is which interstate minutes of use the LEC can measure in order to assess properly the interconnection charge.[288] The LEC can use the same usage measurements to bill the switched access customer for the interconnection charge that it uses to bill that customer for other per-minute access charges, such as local switching. In most cases, this approach is likely to result in the IXC receiving the bill, as was originally proposed.

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[283] AT&T Comments at 13; Bell Atlantic Comments at 8; BellSouth Comments at 30-31; GTE Comments at 37-39; NYNEX Comments at 13.

[284] See, e.g., GSA Reply Comments at 7-8; GTE Comments at 37-40, Reply Comments at 15-17; NYNEX Comments at 13; PacTel Comments at 49-50, Reply Comments at 39-40; USTA Reply Comments at 26.

[285] Ad Hoc Reply Comments at 20; Ameritech Comments at 21-22; MCI Comments at 7-8.

[286] Sprint Comments at 8.

[287] As proposed in the Notice, we will require the LECs, in assessing interconnection charges, to use a procedure similar to the current procedures for billing shared use of facilities for switched and special access. Notice, 7 FCC Rcd at 7745, ¶ 31. The interconnector would pay the applicable interconnection charge for switched transport on a per-minute basis, plus a pro rata share of any applicable contribution charge that may in the future be implemented for special access. See Special Access Order, 7 FCC Rcd at 7439, ¶ 149.

[288] Identifying interstate, as opposed to intrastate, minutes may require percentage of interstate usage (PIU) reporting. See ¶¶ 135-137, below.

134. Where an IXC uses a CAP's services, the CAP may order switched access in its own name, in which case the CAP would pay the interconnection charge. Alternatively, the CAP could order switched access in the IXC's name, acting as the IXC's agent, or the IXC may order switched access directly. Where the CAP orders access as an agent for an IXC, the IXC will be considered the switched access customer of record, and will pay the interconnection charge. If, however, the CAP does not deliver its customers' traffic to the LEC in a form that identifies the individual customer, such as on separately identifiable circuits or groups of circuits, then the CAP will be the switched access customer and will pay the interconnection charge.

D. PIU Reporting

135. Notice. When terminating switched traffic is handed off to the LECs, they generally will be unable to determine the jurisdictional nature of the traffic. Since the LECs apply different access charges for interstate and intrastate traffic, we concluded in the Notice that it might be necessary to impose some jurisdictional reporting requirements on interconnecting parties. We tentatively concluded that in such circumstances, interconnectors or their customers should be required to report their percentage of interstate use (PIU) to the LECs.[289]

136. Comments. As with the question of who should be billed for the interconnection charge, some parties argue that the interconnector should be required to report PIU data, while others argue that the customer of record for switched access should provide PIU data.[290] Allnet, however, recommends that terminating PIUs be set to equal originating PIUs, which the LECs can measure directly.[291]

137. Discussion. We will require PIU reporting, because the LECs lack jurisdictional information for terminating traffic. We also conclude that the customer of record for switched access must make such reports to the LEC. As in the case of who pays the interconnection charge, it appears that the switched access customer is in the best position to provide information not only

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[289] Notice, 7 FCC Rcd at 7746-47, ¶ 39.

[290] Ameritech Comments at 22; Bell Atlantic Comments at 9; GTE Reply Comments at 17-18; MCI Comments at 8; MFS Comments at 21; Missouri Comments at 9; NYNEX Comments at 22-23; OPASTCO Comments at 5-6; PacTel Reply Comments at 40-41; Rochester Comments at 11-12; SW Bell Comments at 22; USTA Comments at 35-36; United Comments at 13-14; US West Comments at 37.

[291] Allnet Comments at 7.

on minutes of use, but also on the jurisdictional nature of those minutes. In cases where an end user may be the switched access customer, however, we will require the IXC providing service to that end user to report PIUs, since the end user may not have the necessary information.

E. Implementation Schedule and Information Reporting

138. Tier 1 LECs, except NECA pool members, must file expanded interconnection tariffs for switched transport consistent with the requirements of this Order no later than November 18, 1993, on ninety days notice, to be effective February 15, 1994.[292] As required in the Special Access First Reconsideration Order, LEC tariffs must include a procedure for adding LEC locations upon receiving a bona fide request from an interconnector.[293] In particular, LEC tariffs must provide that tariff revisions adding LEC locations in which expanded interconnection for switched transport is offered will be filed within 45 days of a bona fide request, to be effective upon 45 days notice.

139. Interconnectors that wish the LEC tariffs filed November 18, 1993 to offer expanded interconnection for switched transport at LEC locations in addition to those already designated for collocation in the special access portion of this proceeding, must request those locations by October 18, 1993. Interconnectors also may request expanded interconnection at additional LEC locations between October 18, 1993 and February 15, 1994.[294]

140. Consistent with our requirements for special access,[295] if an interconnector requests expanded interconnection for switched transport at a LEC location where the LEC has not already been granted an exemption based on lack of space, the LEC may file a petition for a space exemption at the same time that it files its initial tariffs for that location.[296] The initial tariffs do not have to offer physical collocation in the LEC locations subject to a space exemption request. If we deny an exemption request based on space availability, a LEC must file tariff revisions within fourteen days, effective on fifteen days notice, to make physical

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[292] LECs and interconnectors must comply with the specific rules set forth in ¶¶ 53-57, supra, among other things.

[293] Special Access First Reconsideration Order, 8 FCC Rcd at 129, ¶ 16.

[294] See supra n.148.

[295] Special Access Order, 7 FCC Rcd at 7490-91, ¶ 260.

[296] We will act on exemption requests as expeditiously as possible.

collocation available at those locations.[297] LEC initial tariffs are to offer physical collocation in all locations not covered by an exemption request based on space availability, unless an exemption based on state regulation or the lack of space has already been granted.

141. LECs whose tariffs are not already in compliance with the requirements concerning nonrecurring reconfiguration charges for switched transport[298] are to file tariff revisions implementing those requirements as soon as possible, but in no event later than November 18, 1993.

142. Finally, information on the implementation of switched transport expanded interconnection, and on the interstate access market is necessary for us to evaluate the effects of our new policies. Therefore, we require the seven Regional Bell Operating Companies and GTE to file reports that identify (1) the parties using expanded interconnection for switched transport in their service territories; and (2) the LEC locations in which they are interconnected. LECs must file these reports annually for the first four years after their initial interstate expanded interconnection tariffs become effective.[299]

F. Legal Authority

143. Notice and Comments. In the Notice, we generally proposed to resolve the architecture, pricing, and rate issues for switched transport interconnection in the same way we had for special access, and invited parties comment on whether we should apply the same policies to switched transport or whether different standards would better serve the public interest.[300] Although several parties commented on our legal authority for mandating

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[297] This procedure will not apply to the extent that it would make the tariff provisions for the LEC locations involved effective prior to the effective date of the remainder of the expanded interconnection tariff filing. See Special Access Order, 7 FCC Rcd 7491 n.607. In such cases, the necessary tariff revisions are to become effective at the same time as the remainder of the expanded interconnection filing.

[298] See supra, ¶ 130.

[299] We delegate to the Chief, Common Carrier Bureau, authority to determine the format and specific information to be provided in the reports. The decision to require these reports is not intended to preclude consideration of additional reporting requirements in the future.

[300] Special Access Order, 7 FCC Rcd at 7743-44, ¶¶ 15-19, 24-28, 31-33, 35.

expanded interconnection,[301] those comments do not raise issues unique to switched transport.

144. Discussion. For the same reasons set forth in the Special Access Order, we conclude that the Commission has legal authority pursuant to Sections 1, 4(i), 201, 202, 205, and 214(d) of the Communications Act to require Tier 1 LECs to implement expanded interconnection for interstate switched transport under the terms and conditions adopted in this Order.[302] We find ample legal authority in these sections of the Act for the rate structure and pricing measures that we prescribe.[303] As in the Special Access Order, we also conclude that the expanded interconnection requirements for switched transport do not constitute a Fifth Amendment taking without just compensation. We find that giving interconnectors a right to physical collocation does not constitute a taking.[304] Even if there were a taking, however, there would be no Fifth Amendment violation because (1) we have authority to engage in takings; (2) the taking would be for a public purpose; and (3) we provide a mechanism for Tier 1 LECs to receive just compensation for the use of their property.[305]

G. Preemption

145. Notice and Comments. In the Notice, we generally proposed to resolve the architecture, pricing, and rate issues for switched transport interconnection as we had for special access, and invited parties to comment on whether we should apply the same policies to switched transport or whether different standards would better serve the public interest.[306] Few parties addressed the

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[301] See, e.g., Ameritech Comments at 16-18; Centel Comments at 3-5; GTE Comments at 24-25; US West Comments at 26-28. Other parties argue that we already have considered the Fifth Amendment takings question. See, e.g., MCI Reply Comments at 14-17; Ad Hoc Reply Comments at 10; Teleport Denver Reply Comments at 7.

[302] See Special Access Order, 7 FCC Rcd at 7470-83, ¶¶ 216-40.

[303] See Id. ¶¶ 219-226.

[304] See Id. at 7476-81, ¶¶ 230-37.

[305] See Id. ¶¶ 230-240.

[306] Special Access Order, 7 FCC Rcd at 7743-44, ¶¶ 15-19, 24-28, 31-33, 35.

In the Special Access Order, we concluded that there was no need for preemption of state programs in order to permit initial implementation of expanded interconnection for interstate special

preemption issue. Alabama argues that our proposal will "illegally preempt" legitimate state interests in intrastate switched transport policy.[307] New York argues that we should not mandate uniform interstate interconnection.[308]

146. Discussion. Regarding preemption, we reach the same conclusion for switched transport that we did for special access. In this Order we adopt the same measures taken in the Special Access Order to minimize the potential conflict between differing federal and state expanded interconnection policies.[309] These include application of the state exemption from the physical collocation requirement. In addition, if a LEC offers both interstate and intrastate expanded interconnection using either physical or virtual collocation, it should provide collocation in a manner that satisfies both federal and state requirements.[310]

IX. NOTICE OF PROPOSED RULEMAKING ON SEPARATIONS ISSUES

147. Notice. The current separations procedures do not specifically contemplate the provision of expanded interconnection. Therefore, we asked the Joint Board, in the special access context, to determine whether separations changes are needed in light of special access expanded interconnection to ensure reasonable jurisdictional allocations. We also sought comment in the Notice on whether there is a need to refer to a Joint Board further

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access. Special Access Order, 7 FCC Rcd at 7488, ¶ 253.

[307] Alabama Reply at 7.

[308] New York Comments at 3.

[309] Special Access Exemption Order, 7 FCC Rcd at 7488-89, ¶¶ 253-55.

[310] Special Access Order, 7 FCC Rcd at 7488, ¶ 254. As we found in the Special Access Order, these measures should help to reduce the potential for federal/state conflict and should limit the ability of LECs to use different approaches to expanded interconnection in the federal and state jurisdictions to unfairly disadvantage interconnectors. As in special access, we also expect LECs and interconnectors to negotiate reasonable mechanisms to avoid double payment for LEC expanded interconnection. Id. at ¶ 255. For example, if under a state physical collocation program, an interconnector has paid the full cost of space preparation, we do not expect additional interstate charges to be applied unless further work is required to permit interstate expanded interconnection. Id.

separations issues with respect to switched transport expanded interconnection of the kind referred concerning special access.[311]

148. Comments. As in the case of special access expanded interconnection, the District of Columbia asserts that the increased competition created by expanded interconnection for switched transport may lead to loss of traffic for the LECs, shifting unused investment to the intrastate jurisdiction, and increasing intrastate rates.[312] The states also argue that the LECs will receive interstate revenues from collocation, but the current separations process will not allocate any additional costs to the interstate jurisdiction.[313] NARUC says that the LECs should be required to exclude an amount of expense equivalent to the amount of revenues received for interstate collocation arrangements before separations occurs.[314]

149. NYNEX and USTA, though, say that no interim separations changes are needed in order to implement expanded interconnection.[315] They say that the Commission should not take up separations issues piecemeal, but should address them in the context of a comprehensive review.[316]

150. Discussion. In order to ensure a proper jurisdictional allocation of LEC costs, we now make the same referral to the Joint Board with respect to expanded interconnection for switched transport that we made with respect to special access. Specifically, we ask the CC Docket No. 80-286 Joint Board to determine whether separations changes are needed in light of

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311 Notice, 7 FCC Rcd at 7746-47, ¶ 39.

312 DC PSC Comments at 2-3, Reply Comments at 3-4. The DC PSC proposes that a minimum interstate usage percentage, based on pre-interconnection data, be used for allocating plant costs that are now allocated based on usage.

313 NARUC Comments at 9.

314 Id.

315 NYNEX Reply Comments at 18-19; USTA Reply Comments at 27-28.

316 GTE also raises separations issues that go beyond the scope of those referred to the Joint Board with respect to special access, arguing that Central Office Equipment Categories 2 and 3 should be combined because SS7 and the use of digital switches have led to misallocations. GTE Comments at 43-45. But see DC Reply Comments at 2-3: The purported need for this change is not related to the implementation of expanded interconnection, so there is no reason to consider this change in the present context.

switched transport expanded interconnection to ensure reasonable jurisdictional allocations and, if so, to undertake the limited task of preparing recommended separations revisions designed to identify LEC expanded interconnection costs and revenues, and allocate them between the state and federal jurisdictions. We do not, however, intend the Joint Board to consider broader separations issues in this context. Parties should file their comments on this issue directly with the Joint Board.[317]

151. In the Special Access Order, we recognized the states' concerns about possible collateral separations effects resulting from the implementation of expanded interconnection, but found that such effects would not be of sufficient magnitude to undermine universal service or threaten state regulatory programs. We reach similar conclusions concerning the potential separations effects of expanded interconnection for switched transport.[318] We here reiterate the importance of universal service under the Communications Act, as well as our commitment to continued achievement of that goal. In the near term, we believe that in the case of expanded interconnection for transport, as well as for special access, the additional pricing flexibility we are granting the LECs will mitigate any adverse effects. In the longer term, we will continue to carefully consider the effects of our policies on universal service.

X. CONCLUSION

152. In this Order, the Commission takes another important step to bring customers the full advantages of developing competition by removing barriers to competitive interconnection. This Order requires Tier 1 LECs to offer expanded opportunities for interconnection with their networks for the provision of interstate switched transport service. Subject to very limited exceptions, Tier 1 LECs are required to offer expanded interconnection for switched transport through physical collocation to all interested parties. Under certain circumstances, virtual collocation arrangements must be offered as well. Connection charges in the LECs' tariffs will compensate them for services offered to interconnectors. We are also authorizing some additional pricing flexibility to enable the LECs to price their own services in response to competition. Together with our Special Access Order, these measures establish an equitable regulatory framework for increased interstate access competition.

XI. PROCEDURAL MATTERS

A. Ex Parte

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[317] See ¶¶ 153-156, infra.

[318] See ¶¶ 13-20, supra.

153. The Third Notice of Proposed Rulemaking concerning expanded interconnection separations issues is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

B. Regulatory Flexibility Act

154. In the Phase I Notice, we certified that the proposed rule changes would not have a significant economic impact on a substantial number of small business entities, as defined by § 601(3) of the Regulatory Flexibility Act.[319] We also stated that to the extent that a PIU reporting requirement would apply to small entities, it would not have a significant economic impact on a substantial number of small business entities. Neither the Chief Counsel for Advocacy of the Small Business Administration nor any other commenting party disagreed with our analysis. The Secretary shall send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with § 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq.

155. We certify that the Regulatory Flexibility Act of 1980 does not apply to the Third Notice of Proposed Rulemaking concerning separations issues because any separations rule changes, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined by § 601(3) of the Regulatory Flexibility Act. The LECs providing interstate access services directly subject to the separations rules are large corporations, or affiliates of such corporations. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with ¶ 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981).

C. Notice and Comment Provision

156. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties are to file comments with the CC Docket No. 80-286 Joint Board concerning this Third Notice of Proposed Rulemaking on or before November 1, 1993, and reply comments on or before December 1, 1993. To file formally in this proceeding, parties must file an original and five copies of all comments and reply comments. Parties that want each Commissioner to receive

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[319] Notice, 7 FCC Rcd at 7749, ¶ 57.

personal copies of their comments must file an original plus nine copies. Parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. Two copies of the comments are to be filed with all CC Docket No. 80-286 Federal-State Joint Board Commissioners, staff members, and other persons listed in Appendix C. Parties should also file one copy of any documents filed in this proceeding with the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. For further information regarding this Third Notice of Proposed Rulemaking, contact Linda L. Haller, (202) 632-1298, or Suzanne M. Tetreault (202) 632-6374, Common Carrier Bureau, Policy and Program Planning Division.

XII. ORDERING CLAUSES

157. Accordingly, IT IS ORDERED, pursuant to authority contained in Sections 1, 4(i), 201-205, and 214(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(i), 154, 201-205, and 214(d), that Parts 61, 64, 65, and 69 of the Commission's Rules are AMENDED as set forth in Appendix B hereto.

158. IT IS FURTHER ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED.

159. IT IS FURTHER ORDERED that all LECs subject to this order shall file tariffs offering switched transport expanded interconnection by November 18, 1993, with an effective date of February 15, 1994.

160. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau is delegated the authority specified herein to act upon implementation details pertaining to expanded interconnection for switched transport and LEC pricing flexibility.

161. IT IS FURTHER ORDERED that except as specifically noted below, the policies, rules, and requirements adopted herein SHALL BE EFFECTIVE sixty days after publication in the Federal Register.

162. IT IS FURTHER ORDERED that the provisions requiring interconnectors that wish the November 18, 1993 tariff filings to include expanded interconnection for switched transport at LEC locations in addition to those already designated for collocation in the special access proceeding to request those locations by

October 18, 1993 SHALL BE EFFECTIVE thirty days after publication in the Federal Register.

163. IT IS FURTHER ORDERED that the separations issues described in paragraphs 150-151, supra, are referred to the Federal/State Joint Board in CC Docket No. 80-286 for the preparation of a Recommended Decision.

164. IT IS FURTHER ORDERED that the Alabama Public Service Commission's Request to File Out-of-Time Comments and the Motion to Accept Late-Filed Reply Comments of WilTel, Inc. ARE GRANTED.

165. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the proposed changes regarding Part 36 of our Rules, 47 C.F.R. Part 36, as described above, and that COMMENT IS INVITED on these proposals.[320]

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[320] These actions are taken pursuant to Sections 1, 4 (i) and (j), 201-205, 218, 220, and 410(c) of the Communications Act, 47 U.S.C. §§ 151, 154(i) and (j), 201-205, 220, and 410(c).

APPENDIX A -- List of Parties

COMMENTS FILED IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING
CC Docket No. 91-141

Ad Hoc Telecommunications Users Committee (Ad Hoc)
Allnet Communications Services, Inc. (Allnet)
Ameritech Operating Companies (Ameritech)
American Telephone and Telegraph Co. (AT&T)
Arizona Corporation Commission (Arizona)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Telecommunications, Inc. (BellSouth)
California Public Utility Commission (California)
Central Telephone Company (Centel)
Cincinnati Bell Telephone (Cincinnati Bell)
Competitive Telecommunications Association (CompTel)
District of Columbia Public Service Commission (DC PSC)
EDS Corporation (EDS)
General Services Administration (GSA)
GTE Service Corporation (GTE)
Illinois Commerce Commission (Illinois)
Independent Data Communications Manufacturers Association (IDCMA)
Independent Telephone Access Group (ITAG)
MCI Communications Corporation (MCI)
MFS Communications Co., Inc. (MFS)
Missouri Public Service Commission (Missouri)
National Association of Regulatory Utilities Commissioners (NARUC)
National Rural Telecommunications Association (NRTA)
National Telephone Cooperative Association (NTCA)
New York Department of Public Service (New York)
NYNEX Telephone Companies (NYNEX)
Organization for the Protection and Advancement of
Small Telephone Companies (OPASTCO)
Pacific Telesis (PacTel)
Rochester Telephone Corporation (Rochester)
Small Business Administration (SBA)
Southern New England Telephone Co. (SNET)
Southwestern Bell Telephone Co. (SW Bell)
Sprint Communications Co. (Sprint)
Teleport Communications Group (Teleport)
Teleport Denver Ltd. (Teleport Denver)
TDS Telecommunications Corporation (TDS Telecom)
US West Communications, Inc. (US West)
United States Telephone Association (USTA)
United Telephone Companies (United)
WilTel, Inc. (WilTel)

REPLY COMMENTS FILED
CC Docket No. 91-141

Ad Hoc Telecommunications Users Committee (Ad Hoc)
Alabama Public Service Commission (Alabama)
American Telephone and Telegraph Company (AT&T)
Anchorage Telephone Utility (Anchorage)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Telephone Companies (BellSouth)
California Public Utilities Commission (California)
Competitive Telecommunications Association (CompTel)
District of Columbia Public Service Commission (DC PSC)
Federal Trade Commission Bureau of Economics
(FTC Bureau of Economics)
General Services Administration (GSA)
GTE Service Corporation (GTE)
Illinois Commerce Commission (Illinois)
MCI Telecommunications Corporation (MCI)
MFS Communications Co., Inc. (MFS)
National Exchange Carrier Association (NECA)
National Telephone Cooperative Association (NTCA)
NYNEX Telephone Companies (NYNEX)
Organization for the Protection and Advancement of
Small Telephone Companies (OPASTCO)
Pacific Telesis (PacTel)
Rochester Telephone Company (Rochester)
Southwestern Bell Telephone Company (SW Bell)
Sprint Communications Co. (Sprint)
Teleport Communications Group (Teleport)
Teleport Denver Ltd. (Teleport Denver)
United Telephone Companies (United)
United States Telephone Association (USTA)
US West Communications, Inc. (US West)
WilTel Telecommunications Group, Inc. (WilTel)

APPENDIX B -- Rule Changes

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 61 -- TARIFFS

Part 61 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 61 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.38 is amended by revising paragraph (b)(4) to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

* * * * *

(b) Explanation and data supporting either changes or new tariff offerings. * * *

* * * * *

(4) For a tariff that introduces a system of density pricing zones, as described in § 69.123 of this chapter, the carrier must, before filing its tariff, submit a density pricing zone plan including, inter alia, documentation sufficient to establish that the system of zones reasonably reflects cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones, and receive approval of its proposed plan.

* * * * *

3. Section 61.47 is amended by adding new paragraph (h)(3) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(h)(3) Those local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to

§ 69.123 of this chapter shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate a separate subindex in each zone for an aggregated category consisting of direct-trunked transport, entrance facilities, and dedicated signalling transport, and another separate subindex in each zone for tandem-switched transport. Notwithstanding paragraph (e) of this section, the annual pricing flexibility for each of these subindexes shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the traffic-sensitive services basket, measured from the last day of the preceding tariff year.

* * * * *

4. Section 61.49 is amended by revising paragraph (k) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(k) For a tariff that introduces a system of density pricing zones, as described in § 69.123 of this chapter, the carrier must, before filing its tariff, submit a density pricing zone plan including, inter alia, documentation sufficient to establish that the system of zones reasonably reflects cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones, and receive approval of its proposed plan.

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Section 64.1401 of Subpart N of Part 64 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; redesignating paragraphs (d) through (f) as paragraphs (f) through (h), respectively; adding new paragraphs (b) and (e); and revising redesignated paragraphs (c), (d), (f), (g), and (h), to read as follows:

§ 64.1401 Expanded interconnection.

* * * * *

(b) The local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate switched transport services:

(1) in their central offices that are classified as end offices or serving wire centers, as well as at all tandem offices housed in buildings containing such carriers' end offices or serving wire centers for which interstate switched transport expanded interconnection has been tariffed;

(2) upon bona fide request, in tandem offices housed in buildings not containing such carriers' end offices or serving wire centers, or in buildings containing the carriers' end offices or serving wire centers for which interstate switched transport expanded interconnection has not been tariffed; and

(3) upon bona fide request, at remote nodes/switches that serve as rating points for interstate switched transport and that are capable of routing outgoing interexchange access traffic to interconnectors and in which interconnectors can route terminating traffic to such carriers. No such carrier is required to enhance remote nodes/switches or to build additional space to accommodate interstate switched transport expanded interconnection at these locations.

(c) The local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate special access and switched transport services through physical collocation, except that they may offer virtual collocation instead of physical collocation, upon approval by the Commission, under the following circumstances:

(1) At an individual local exchange carrier location, if that location lacks physical space to accommodate physical collocation;

(2) For new customers at an individual local exchange carrier location, if the space available for physical collocation has been exhausted. Local exchange carriers shall not withdraw their offering of physical collocation for existing customers due to space limitations, absent extraordinary circumstances; or

* * * * *

(d) In addition to the obligations imposed by paragraph (c) of this section, the local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate special access services through virtual collocation in any local exchange carrier location in which:

* * * * *

(e) In addition to the obligations imposed by paragraph (c) of this section, the local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate switched transport services through virtual collocation in any local exchange carrier location in which:

(1) The carrier is providing intrastate switched transport expanded interconnection through virtual collocation, or

(2) The carrier negotiates interstate switched transport virtual collocation arrangements with one or more interconnectors.

(f) For purposes of this subpart, physical collocation means an offering that enables interconnectors:

(1) To place their own equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers, within or upon the local exchange carrier's buildings,

(2) To use such equipment to connect interconnectors' fiber optic systems or microwave radio transmission facilities (where reasonably feasible) with the local exchange carrier's equipment and facilities used to provide interstate special and switched access services,

(3) To enter the local exchange carrier's buildings, subject to reasonable terms and conditions, to install, maintain, and repair the equipment described in paragraph (f)(1) of this section, and

(4) To obtain reasonable amounts of space in local exchange carrier locations for the equipment described in paragraph (f)(1) of this section, allocated on a first-come, first-served basis.

(g) For purposes of this subpart, virtual collocation means an offering that enables interconnectors:

(1) To designate or specify equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers, to be located within or upon the local exchange carrier's buildings, and dedicated to such interconnectors' use,

(2) To use such equipment to connect interconnectors' fiber optic systems or microwave radio transmission facilities (where reasonably feasible) with the local exchange carrier's equipment and facilities used to provide interstate special and switched access services, and

* * * * *

(h) Under both physical collocation offerings and virtual collocation offerings for expanded interconnection of fiber optic facilities, local exchange carriers shall provide:

(1) An interconnection point or points at which the fiber optic cable carrying an interconnectors' circuits can enter each local exchange carrier location, provided that the local exchange carrier shall designate interconnection points as close as reasonably possible to each location; and

(2) At least two such interconnection points at any local exchange carrier location at which there are at least two entry points for the local exchange carrier's cable facilities.

3. Section 64.1402 of the rules is amended by revising paragraph (c) to read as follows:

(c) Interconnectors shall not be allowed to use interstate special access expanded interconnection offerings to connect their transmission facilities with the local exchange carrier's interstate switched services until that local exchange carrier's tariffs implementing expanded interconnection for switched transport have become effective.

PART 65 -- INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

Part 65 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 65 continues to read as follows:

AUTHORITY: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 65.702(b) is amended by revising the second sentence to read as follows:

§ 65.702 Measurement of interstate services earnings

* * * * *

(b) * * * The access service categories shall be: an aggregated category consisting of Special Access, § 69.113, and Contribution Charges for Special Access Expanded Interconnection, § 69.122; Connection Charges for Expanded Interconnection, § 69.121; Common Line, §§ 69.104-69.105; and an aggregated category

consisting of Line Termination, § 69.106, Intercept, § 69.108, Local Switching, § 69.107, Transport, §§ 69.110-69.112, 69.124, 69.125, and Information, § 69.109. * * *

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PART 69 -- ACCESS CHARGES

Part 69 of Title 47, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 69 continues to read as follows:

AUTHORITY: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.110, paragraph (e) is revised, and new paragraphs (f), (g), and (h) are added, to read as follows:

§ 69.110 Entrance facilities

* * * * *

(e) Except as provided in paragraphs (f), (g), and (h) of this section, telephone companies shall not offer entrance facilities based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

(f) Except in the situations set forth paragraphs (g) and (h) of this section, telephone companies may offer term and volume discounts in entrance facilities charges within each study area used for the purpose of jurisdictional separations, in which interconnectors have taken either:

(1) at least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in section 69.121(a)(1)) in offices in the study area that the telephone company has assigned to the lowest priced density pricing zone (zone 1) under an approved density pricing zone plan as described in sections 61.38(b)(4) and 61.49(k) of this chapter; or

(2) an average of at least 25 DS1-equivalent cross-connects for the transmission of switched traffic per office assigned to the lowest priced density pricing zone (zone 1).

(g) In study areas in which the telephone company has implemented density zone pricing, but no offices have been assigned to the lowest price density pricing zone (zone 1), telephone

companies may offer term and volume discounts in entrance facilities charges within the study area when interconnectors have taken at least 5 DS1-equivalent cross-connects for the transmission of switched traffic (as described in section 69.121(a)(1)) in offices in the study area.

(h) In study areas in which the telephone company has not implemented density zone pricing, telephone companies may offer term and volume discounts in entrance facilities charges when interconnectors have taken at least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in section 69.121(a)(1)) in offices in the study area.

3. Section 69.111, is revised to add new paragraphs (i), (j), and (k) to read as follows:

§ 69.111 Tandem-switched transport and tandem charge

* * * * *

(i) Except in the situations set forth in paragraphs (j) and (k) of this section, telephone companies may offer term and volume discounts in tandem-switched transport charges within each study area used for the purpose of jurisdictional separations, in which interconnectors have taken either:

(1) at least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in section 69.121(a)(1)) in offices in the study area that the telephone company has assigned to the lowest priced density pricing zone (zone 1) under an approved density pricing zone plan as described in sections 61.38(b)(4) and 61.49(k) of this chapter; or

(2) an average of at least 25 DS1-equivalent cross-connects for the transmission of switched traffic per office assigned to the lowest priced density pricing zone (zone 1).

(j) In study areas in which the telephone company has implemented density zone pricing, but no offices have been assigned to the lowest priced density pricing zone (zone 1), telephone companies may offer term and volume discounts in tandem-switched transport charges within the study area when interconnectors have taken at least 5 DS1-equivalent cross-connects for the transmission of switched traffic (as described in section 69.121(a)(1)) in offices in the study area.

(k) In study areas in which the telephone company has not implemented density zone pricing, telephone companies may offer term and volume discounts in tandem-switched transport charges when interconnectors have taken at least 100 DS1-equivalent cross-

connects for the transmission of switched traffic (as described in section 69.121(a)(1)) in offices in the study area.

4. Section 69.112, paragraph (f) is redesignated as paragraph (g), paragraph (e) is revised, and new paragraphs (f), (g), and (h) are added, to read as follows:

§ 69.112 Direct-trunked transport

* * * * *

(e) Except as provided in paragraphs (f), (g), and (h) of this section, telephone companies shall not offer direct-trunked transport rates based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

(f) Except in the situations set forth in paragraphs (g) and (h) of this section, telephone companies may offer term and volume discounts in direct-trunked transport charges within each study area used for the purpose of jurisdictional separations, in which interconnectors have taken either

(1) at least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in section 69.121(a)(1)) in offices in the study area that the telephone company has assigned to the lowest priced density pricing zone (zone 1) under an approved density pricing zone plan as described in sections 61.38(b)(4) and 61.49(k) of this section; or

(2) an average of at least 25 DS1-equivalent cross-connects for the transmission of switched traffic per office assigned to the lowest priced density pricing zone (zone 1).

(g) In study areas in which the telephone company has implemented density zone pricing, but no offices have been assigned to the lowest priced density pricing zone (zone 1), telephone companies may offer term and volume discounts in direct-trunked transport charges within the study area when interconnectors have taken at least 5 DS1-equivalent cross-connects for the transmission of switched traffic (as described in section 69.121(a)(1)) in offices in the study area.

(h) In study areas in which the telephone company has not implemented density zone pricing, telephone companies may offer term and volume discounts in direct-trunked transport charges when interconnectors have taken at least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in section 69.121(a)(1)) in offices in the study area.

5. Section 69.121 is amended by revising paragraph (a) to read as follows:

§ 69.121 Connection charges for expanded interconnection.

(a) Appropriate connection charge subelements shall be established for the use of equipment and facilities that are associated with offerings of expanded interconnection for special access and switched transport services, as defined in part 64, subpart N of this chapter. To the extent that the same equipment and facilities are used to provide expanded interconnection for both special access and switched transport, the same connection charge subelements shall be used.

(1) A cross-connect subelement shall be established for charges associated with the cross-connect cable and associated facilities connecting the equipment owned by or dedicated to the use of the interconnector with the telephone company's equipment and facilities used to provide interstate special or switched access services. Charges for the cross-connect subelement shall not be deaveraged within a study area that is used for purposes of jurisdictional separations.

6. Section 69.123 is amended by revising the heading, revising paragraphs (a) and (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d), to read as follows:

§ 69.123 Density pricing zones for special access and switched transport.

(a) Telephone companies may establish a reasonable number of density pricing zones within each study area that is used for the purposes of jurisdictional separations, in which at least one interconnector has taken the subelement of connection charges for expanded interconnection described in § 69.121(a)(1). Only one set of density pricing zones shall be established within each study area, to be used for the pricing of both special and switched access pursuant to paragraphs (c) and (d) of this section.

* * * * *

(c) Notwithstanding § 69.3(e)(7), in study areas in which at least one interconnector has taken a cross-connect, as described in § 69.121(a)(1), for the transmission of interstate special access traffic, telephone companies may charge rates for special access subelements of DS1, DS3, and such other special access services as the Commission may designate, that differ depending on the zone in which the service is offered, provided that the charges for any such service shall not be deaveraged within any such zone.

(1) A special access service subelement shall be deemed to be offered in the zone that contains the telephone company location from which the service is provided.

(2) A special access service subelement provided to a customer between telephone company locations shall be deemed to be offered in the highest priced zone that contains one of the locations between which the service is offered.

(d) Notwithstanding § 69.3(e)(7), in study areas in which at least one interconnector has taken a cross-connect, as described in section 69.121(a)(1), for the transmission of interstate switched traffic, or is using collocated facilities to interconnect with telephone company interstate switched transport services, telephone companies may charge rates for subelements of direct-trunked transport, tandem-switched transport, entrance facilities, and dedicated signalling transport that differ depending on the zone in which the service is offered, provided that the charges for any such service shall not be deaveraged within any such zone. Telephone companies may not, however, charge rates for the interconnection charge that differ depending on the zone in which the service is offered.

(1) A switched transport service subelement shall be deemed to be offered in the zone that contains the telephone company location from which the service is provided.

(2) A switched transport service subelement provided to a customer between telephone company locations shall be deemed to be offered in the highest priced zone that contains either of the locations between which the service is offered.

APPENDIX C -- Federal-State Joint Board Service List

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Commissioner
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SEPARATE STATEMENT
OF
COMMISSIONER ANDREW C. BARRETT

RE: Expanded Interconnection with Local Telephone Company Facilities (CC Docket No. 91-141) and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board (CC Docket No. 80-286) -- Second Report and Order and Third Notice of Proposed Rulemaking

This item is a significant step forward in the Commission's efforts to bring the benefits of competition to interstate access services. It will expand the benefits of competition beyond the more narrow market for special access services to the broader market for transport of switched access services. The result will be expanded service choices for telecommunications users, heightened incentives for efficiency, and lower prices for access services.

Although this is a major step toward greater access market competition, today's decision is a measured step. It effectively balances the competing interests of end users, Interexchange Carriers (IXCs), Local Exchange Carriers (LECs), and Competitive Access Providers (CAPs). This is particularly true with regard to the pricing flexibility granted LECs with operational expanded interconnection arrangements. This provision for limited pricing flexibility, coupled with the expanded opportunities for interconnection, results in an equitable regulatory approach to increased competition in these markets.

I have been particularly aware of, and sensitive to, the effect today's action might have on residential and small business customers, especially those in rural areas. This decision should have little adverse impact on these subscribers for three major reasons.

First, this decision imposes expanded interconnection obligations only on the largest LECs, the Tier 1 carriers not participating in NECA pools. This Order will not require smaller companies serving rural areas to provide expanded interconnection.

Second, this Order grants flexibility in switched access transport pricing to LECs with operational interstate expanded interconnection arrangements. This will offer these LECs the ability to compete effectively and fairly with alternative suppliers of transport services. Judicious use of this flexibility will act to minimize any potential impact on contributions to universal service support.

Third, the Commission has been careful to limit the effect of today's decision on universal service support flows. The interim rate structure for switched access transport includes a usage-based interconnection charge to be paid by all interstate access customers. At the time the Commission adopted the interim transport rate structure, this interconnection charge would recover as much as 80 percent of current transport revenues. The bulk of existing universal service support flows can be maintained through this charge for the duration of the interim transport rate structure.[1]

However, in the longer term, the Commission will need to continue to explore alternatives to the current methods of supporting universal service. Our decision today contributes to the need to reach conclusions regarding these alternatives. By significantly expanding potential competition in access services, this decision brings closer the time that alternative approaches will need to be put into place. But, this is insufficient reason to deny or delay to telecommunications users the very substantial benefits of competition that will result from our decision today.

The impact of this decision will be felt over time, not instantaneously, as competition increasingly takes hold. As alternative access providers gain market share, it will be important that the Commission carefully monitor and assess competitive developments. As we gain experience with increased competition in access markets, we must maintain flexibility to make adjustments and respond to changing circumstances. But we can not -- and should not -- wait for certainty in all the possible

---

[1] A recently released study estimates that contribution to universal service support flows from long distance access and intraLATA toll services total roughly $20 billion annually. Without commenting on the validity of that estimate, I must point out that such a figure does not relate directly to any potential impact of the decision we make today. This decision potentially affects revenues for interstate transport service only, which in 1992 totalled approximately $4.1 billion for Tier 1 LECs. The usage-based interconnection charge to be paid by all interstate access customers will recover up to 80 percent of these revenues. Thus, in 1992 something on the order of $1 billion in LEC revenues could have been potentially opened to competition by this Order.

Of course, this figure also vastly overestimates the potential impact of today's decision. It is a revenue figure, and does not directly relate to the contribution that could be potentially lost to competition. While not easily amenable to accurate and reliable estimation, that amount is considerably lower. Moreover, the $1 billion figure sets an upper bound on even the potential revenue impact of today's decision. LECs will retain a sizeable share of switched access transport markets.

consequences of the important decisions facing us. Uncertainty inevitably surrounds any policy decision with the potential to confer substantial benefits. Today's decision has been carefully crafted to minimize that uncertainty. The benefits that will flow from this decision far exceed any risk of adverse impact on residential, small business, and rural subscribers.

Finally, I am supportive of the provision that we refer this matter to the CC Docket No. 80-286 Joint Board for further investigation. That body will make the appropriate determinations as to whether separations changes are needed to ensure reasonable jurisdictional allocations under interstate expanded interconnection for switched service.

This item represents a milestone for the telecommunications industry. It builds upon previous decisions and FCC precedents and takes the next logical step in the continuing progression toward more competitive telecommunications markets.

Separate Statement
of
Commissioner Ervin S. Duggan

Dissenting In Part

In re: Expanded Interconnection with Local Telephone Company Facilities (CC Docket No. 91-141), Second Report and Order and Third Notice of Proposed Rulemaking

I fully support the Commission's decision today to require local telephone companies to allow expanded interconnection for competitive local transport. I also support the Commission's decision to allow the local telephone companies considerable pricing flexibility by allowing them to adopt a "zone density pricing" scheme for transport. I dissent, however, with respect to the majority's decision to allow the local telephone companies to put volume and term discounts into effect for transport without tying this greater level of pricing flexibility to the onset of actual, as opposed to potential, competition for transport.

How much pricing flexibility to allow local telephone companies, and how fast to allow it, are difficult issues. We need to recognize, on the one hand, that these companies now face oncoming competition for switched transport, and that they must bring their transport rates more into line with costs or risk losing business. We have supported this transition by replacing per-minute transport pricing with a new, more cost-based rate structure, due to take effect in December. In today's decision, we also permit a more cost-based zone density pricing scheme. Telephone companies also have substantial flexibility to alter their rates under price caps.

If, on the other hand, we allow too much pricing flexibility too soon, emerging local competitors could be stalled at the gate. On the special access side, LECs offer deep volume and term discounts; such discounts doubtless will be imported into the transport side. Indeed, the FCC's Common Carrier Bureau is now conducting an inquiry into some of the deepest discounts in an effort to determine if such pricing is genuinely cost-based.

I decline to endorse volume and term discounts without some preliminary evidence of actual local competition for another reason: Steep discounts on rates for transport could damage long distance competition. Only the largest interexchange carriers are able to take advantage of most volume and term discounts, and those discounts will give large IXCs a substantial cost advantage over

their smaller competitors. We have not yet assessed fully the impact on smaller long distance carriers of our move to a revised transport rate structure. We should be concerned, in my judgment, that in the name of promoting local competition, we risk unintentionally creating diminished competition in the long distance market.

For all these reasons, I would prefer to introduce additional pricing flexibility in phases, as actual competition develops. The test that the majority adopts today does not reflect a sufficient level of actual competition, in my judgment, to justify allowing the full range of volume and term discounts to take effect all at once. The existence of a single interconnecting party taking 100 cross-connects in a single office (the equivalent of 4 DS3s) could trigger broad volume and term discounts throughout a state. This possibility is of greater concern because that interconnecting party might not even be a competitive access provider: it could be a large interexchange carrier. Would we declare local competition a success if we found that AT&T was the only interconnector in a state, and that its presence triggered the very volume and discounts that could inhibit entry by interconnectors providing competitive local access? To me, a single interconnector certainly is evidence of the beginnings of actual competition, but without others, that test does not assure me that we have arrived at a state of actual competition.

I believe we should have adopted instead a trigger for volume and term discounts reflecting the onset of actual local competition. Such discounts might be triggered, for example, by some minimum number of interconnectors; by a minimum number of exchanges in which parties were providing expanded interconnection; by a percentage of total transport trunks being provided by competitors, or by some other surrogate demonstrating the emergence of real competition. Under such a model the local telephone company would be allowed to offer deep discounts at the point where its business faced a real competitive threat. Cities in which local competition has already advanced--- New York and Chicago, for example--- would most likely satisfy any such test right away.

Given this reservation, I must dissent in part, while joining my colleagues on other points in this proceeding.

Let me add a final word about the responsibilities of the new competitors of the local telephone companies. The nation's telephone companies have a long and commendable history of providing affordable, high quality, ubiquitous telephone service to households of all sorts. Once they face competition for their core businesses, they cannot be expected to shoulder this burden alone. Most of the competitive access providers have recognized that all providers of local access services should support quality universal telephone service. We have taken many steps in today's decision to safeguard universal service, among them our requirement

that competitive access providers pay an interconnection charge to support universal service. The Commission has given this principle unwavering support. We will be steadfast in protecting universal service as a new era of local competition emerges and we will depend on competitors to do their part.

We also may want to enlist this fledgling industry in helping us track competition and its effect on universal service. The FCC must have good information about the state of competition in the local marketplace if we are to judge the wisdom of our new policies. Are the LECs losing business? How much? How is the competitive access business doing? To what extent are interexchange carriers becoming their own providers of transport? We will depend on all the competitors, LECs and new entrants alike, to provide the answers we need.

* * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Policy and Rules Concerning Rates for Dominant Carriers — AAD 92-47

MEMORANDUM OPINION AND ORDER

Adopted: September 17, 1993; Released: October 12, 1993

By the Acting Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. In the *LEC Price Cap Order*, the Commission concluded that incentive, or "price cap," regulation would provide the local exchange carriers (LECs) with the impetus and opportunity to create and advance a communications network that will keep the United States at the forefront of a worldwide "information economy," and will inspire new services and continuing excellence through investment incentives.[1] In that Order, the Commission also reiterated its commitment to assure the availability of high quality, innovative communications services and the development and maintenance of the telecommunications infrastructure needed to provide these services. Although it expressed certainty that incentive regulation would yield these results, the Commission also ordered the Common Carrier Bureau (Bureau) to expand its monitoring of service quality and infrastructure development. The increased monitoring would allow the Commission to observe the success of incentive regulation, or to become aware of any reduction of service quality or infrastructive investment.

2. The Commission determined that all LECs under price cap regulation would be required to file quarterly service quality reports. LECs for which price cap regulation is mandatory -- the Bell Operating companies (BOCs) and GTE -- would also be required to file semiannual service quality reports and annual infrastructure reports. The Commission delegated to the Chief, Common Carrier Bureau, authority to establish reporting requirements to capture trends in service quality and infrastructure development in the telephone industry under price cap regulation.

3. In response to the Commission's directive, the Bureau released an order setting forth service quality and infrastructure reporting requirements for LECs subject to price cap regulation.[2] The Bureau stressed that the development of this monitoring plan would be evolutionary, with efforts made to increase the uniformity and usefulness of the reports, as well as to respond to any derogation in service quality or infrastructure development, and to address the needs of state regulators, users, and other interested parties.[3] Since the release of that Order, various waiver orders and three public notices have somewhat modified the filing requirements.[4]

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[1] Second Report and Order, 5 FCC Rcd 6786, 6827 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), *modified on recon.*, 6 FCC Rcd 2637 (1991), *petitions for further recon. dismissed*, 6 FCC Rcd 7482 (1991), *upheld on appeal, National Rural Telecom Association v. FCC*, Nos. 91-1300, 91-1303, 91-1304 and 91-1326, slip op. (D.C. Cir. Mar. 26, 1993), *further modified on recon.* 6 FCC Rcd 4524 (1991) (*ONA Part 69 Order*), *petitions for recon. of ONA Part 69 Order pending, appeal docketed, D.C. PSC v. FCC*, No. 9101279 (D.C. Cir. June 14, 1991).

[2] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Memorandum Opinion and Order, 6 FCC Rcd 2974 (Com. Car. Bur. 1991)(*Service Quality Order*); *reconsideration* 6 FCC Rcd 7482 (Com. Car. Bur. 1991); *application for review pending.*

[3] *Service Quality Order*, 6 FCC Rcd at 2995, para. 51.

[4] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Memorandum Opinion and Order, 6

4. One of these, the *July 1992 Public Notice*, also solicited comments on further modifications to service quality and infrastructure reporting. In this Order we consider the proposals set forth in the *Notice*, and the comments filed.[5] In addition, we make some minor adjustments and clarifications of the existing filing instructions, to correct problems we have discovered in reviewing the filings.

II. DISCUSSION

A. Need for Modification of Reporting Requirements

5. Our *July 1992 Notice* stated our desire to improve the monitoring system immediately; it made some changes effective upon its release, and proposed and sought comment on additional changes. Nine parties oppose any revisions to the service quality and infrastructure reporting requirements at this time. All of these parties argue that revision is premature and should wait until after the LEC price cap performance review.[6] Some parties suggest that changes in the reporting requirements will decrease our ability to monitor trends in a carrier's performance under price caps.[7] Two parties, ARINC and TCA, support all of the proposals put forth in the *Notice*, with TCA offering additional proposals of its own.[8]

6. We will examine each proposal on its own merits and make revisions, or not, accordingly. This was our intention when we stated that development of the service quality and infrastructure monitoring program would be evolutionary. We will attempt to retain continuity of data to the extent possible, but remain convinced that improvements should be made as soon as possible, and that uniformity in the units and methods of measurement is desirable. Accordingly, the modifications established here will be effective as soon as practicable after the release of this Order, and will be reflected in filings beginning March 31, 1994 for data from October 1, 1993 onward.[9] These changes are shown in the Attachment appended to this Order.[10]

7. We would also take this opportunity to raise an issue that continues to be a source of disagreement among the commenting parties -- the issue of benchmarking.[11] Several non-LEC commenters, including ARINC and TCA, assert the usefulness and desirability of benchmarking, and describe it as the goal of the Bureau's emphasis on uniformity of measurement units and methodologies.[12] The LECs, on the other hand, mention benchmarking as a danger and as an inappropriate use of the ARMIS data. They cite the Bureau's discussions of the monitoring program to track each price cap LEC's performance, and state that there is not and cannot be comparability among these carriers.[13]

8. While we acknowledge that there are differences among the LECs, we also affirm that benchmarking is not only desirable but indispensable. The Commission stated, in the *LEC Price Cap Order*, that the service quality and infrastructure reports were to be as standardized as possible, and delegated to the Bureau the task of assuring this. The Commission said that "efforts to make the reports more uniform will continue," and specified that "the Bureau [is directed] to make every effort to promote uniformity among the LECs regarding classification of services, establishment of intervals, units of measurement ... and other reporting factors."[14] Where differences among the carriers exist, the Commission stated, the reports "must be similar enough to permit ready benchmarking."[15] We believe that benchmarking will enable us to evaluate the impact of price cap regulation on the quality of service

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FCC Rcd 4819 (Com. Car. Bur. 1991) (*Four BOC Waiver*); Memorandum Opinion and Order, 6 FCC Rcd 5051 (Com. Car. Bur. 1991) (*NYNEX Waiver*); Memorandum Opinion and Order, 6 FCC Rcd 6104 (Com. Car. Bur. 1991) (*Ameritech Waiver*); Memorandum Opinion and Order, 6 FCC Rcd 7231 (Com. Car. Bur. 1991) (*Oswayo River Waiver*); Public Notice, 7 FCC Rcd 3590 (Com. Car. Bur. 1992) (*March 1992 Public Notice*); Public Notice, 7 FCC Rcd 4632 (Com. Car. Bur. 1992) (*July 1992 Public Notice*, or *Notice*); Memorandum Opinion and Order, 7 FCC Rcd 4021 (Com. Car. Bur. 1992) (*GTE-Contel Waiver*); Public Notice, 7 FCC Rcd 8795 (Com. Car. Bur. 1992) and Erratum, DA 92-1696, released December 18, 1992 (*December 1992 Public Notice*).

[5] Comments were filed by Aeronautical Radio, Inc. (ARINC); Ameritech Operating Companies (Ameritech); American Telephone and Telegraph Company (AT&T), the Bell Atlantic telephone companies (Bell Atlantic); BellSouth Telecommunications, Inc. (BellSouth); GTE Service Corporation (GTE); MCI Communications Corporation (MCI); the NYNEX Telephone Companies (NYNEX); Pacific Bell; Rochester Telephone Corporation (Rochester); the Southern New England Telephone Company (SNET); Southwestern Bell Telephone Company (SWBT); Tele-Communications Association (TCA); the United States Telephone Association (USTA); and the United Telephone Companies (United). Reply comments were filed by Ameritech; AT&T; Bell Atlantic; Central Telephone Company (Centel); GTE; International Communications Association (ICA); MCI; NYNEX; Pacific Bell; SWBT; TCA; and USTA.

[6] *See, e.g.*, GTE Comments at 2-3; USTA Comments at 1-3. In the *LEC Price Cap Order* the Commission decided to undertake a comprehensive performance review of the price cap system of regulation after the end of the third year. This review will evaluate LEC performance under price cap regulation and make adjustments to the plan as necessary. *LEC Price Cap Order*, 5 FCC Rcd at 6789, para. 20.

[7] *See, e.g.*, United Comments at 1-2; NYNEX Comments at 1-2.

[8] ARINC Comments at 1-2; TCA Comments at 15 and Appendix B.

[9] Although this prompt effectiveness shortens the implementation period we generally try to provide, the requirements set forth here have been developed in concert with the industry, through the use of a USTA working group, so carriers have had abundant notice of the changes. It is important that changes be effective as soon as possible because of the imminent conducting of the price cap performance review.

[10] The Attachment is a comprehensive description of revised FCC Reports 43-05, 43-06 and 43-07, including instructions and reporting procedures for each report.

[11] Benchmarking, as used here, refers to the reviewing of performance data by several entities and using the 'best' performance as a paradigm. The benefit of this approach in price cap LEC monitoring is that the benchmark is as dynamic as the industry; the drawback is that the LECs and their service areas and populations are very different, and can never be directly comparable.

[12] *See, e.g.*, ARINC Comments at 2 (supporting the *Notice*'s proposed development of gathering actual performance records rather than records of a LEC's success in meeting its own internal standards).

[13] *See, e.g.*, Bell Atlantic Comments at 1-2; GTE Comments at 12.

[14] *LEC Price Cap Order*, 5 FCC Rcd at 6828, para. 341 and n.455.

[15] *Id.*

provided by the LECs and on the rate of development of technological improvements that are reflected in the LEC infrastructure reports.[16]

B. Disaggregated Reporting

9. We currently collect data from the price cap LECs on a study area basis. The *Notice* suggested that we might collect data on an exception basis at a more disaggregated level, such as wire center, as proposed earlier by TCA.[17] Such reporting would require that those carriers having any study areas that failed to perform above a predetermined threshold, established by the Commission, report on a detailed level any entity (wire center, central office) within that study area that failed to perform at that level. Carriers performing at or above the threshold would continue to report at the study area level.

10. Nine of the commenting parties (eight LECs and USTA) are opposed to reporting at a more disaggregated level than is now required.[18] They argue that such a requirement would be extremely burdensome for all concerned, and the Commission's setting of a performance threshold would lead to the creation of national standards. These parties point to our decision in the *Service Quality Order* not to disaggregate reporting to wire centers. There, we stated that this expanded reporting would be an unjustified burden on the LECs, and on the Commission's staff and facilities.[19] In that Order, they note, we also concluded that national standards were not necessary at that time, and that the establishment of such standards is beyond the authority delegated to this Bureau by the Commission.[20]

11. TCA, which has consistently argued for exception reporting, continues to believe that greater disaggregation is necessary in order to spot locations suffering from persistently inadequate service. However, TCA suggests that an alternative to such exception reporting would be to require that each LEC list those wire centers that fall within the lowest 10% of all its reporting entities in actual performance for two consecutive quarters. TCA notes that this would allow for the use of existing tables, so that no new reports would be required.[21]

12. We have reviewed the arguments presented, and have determined that our current requirement for reporting at the study area level should be retained. We note that we do disaggregate to MSA/non-MSA in some reports, and that switch downtime incidents of two minutes or more are reported and fully identified by individual switch. Our review of submitted data reveals no indications of degraded service or of increased need for detail. Continuing high service quality means that increased disaggregation of these data would place on the filing carriers and on Commission resources a burden that could not be justified. We continue to believe, and the data collected so far confirm, that the existing high level of service quality and the LECs' responses to price cap incentives negate any need for disaggregated reporting or the establishment of national standards. We have stated, however, that if we should see any evidence of degradation in service, we will revisit this issue. We note that price cap performance review is scheduled to begin in January 1994; it is possible that we would determine at that time that some sort of exception reporting should be implemented. In light of this possibility, and to avoid any delay in such implementation, we now direct price cap LECs to retain all wire center level records underlying these reports. These records must be kept ready for on-demand perusal by Commission staff, and possibly for filing in the future.

C. Who Should Submit Service Quality and Infrastructure Reports

13. At this time, only price cap LECs file service quality and infrastructure reports. The *Notice* explored the possibility of requiring such reports from other entities, including other, non-price cap LECs, as well as interexchange carriers.[22]

14. Since the Commission has recently adopted a Report and Order establishing optional incentive regulation plans for non-price cap LECs, including requirements of service quality and infrastructure reporting from those LECs, it would be inappropriate to discuss that issue here.[23] Likewise, the Commission has recently adopted a Report and Order in the AT&T price cap performance review.[24] In light of these circumstances, it would be inappropriate for us to address in the instant proceeding the question of extending reporting requirements to parties from whom such reporting is currently not required. We are, however, considering expansion of reporting requirements from at least some price cap carriers. We suggest here that it might be fruitful to collect Semi-annual Service Quality and Infrastructure data from elective price cap companies. We expect to release a public notice in the near future proposing this expansion and soliciting comments.

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[16] In the Order establishing and implementing the Automated Reporting Management and Information System (ARMIS), the Commission stated that one purpose of its automated reporting system is to provide an improved basis for oversight functions and to quantify the effects of alternative policy proposals. Benchmarking is one of many tools used to evaluate the reasonableness of past and proposed policies, including price cap regulation for LECs. Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules) 2 FCC Rcd 5770 (1987); *recon.*, 3 FCC Rcd 6375 (1988); *further recon.*, 4 FCC Rcd 8240 (1989).

[17] *July 1992 Notice*, 7 FCC Rcd at 4632. TCA initially suggested exception reporting in its Comments in response to our *March 1991 Public Notice*, 6 FCC Rcd 1621 (Com. Car. Bur. 1991) proposing service quality reports and soliciting comments on its suggested reports. The TCA remarks were considered and discussed by the Bureau in the *Service Quality Order*.

[18] Bell Atlantic, BellSouth, Pacific Bell, NYNEX, GTE, Rochester, United and SNET oppose disaggregated reporting. *See, e.g.*, GTE Comments at 3; USTA Comments at 3.

[19] *Service Quality Order*, 6 FCC Rcd at 2974, para. 40.

[20] *Id.* at para. 44.

[21] TCA Comments at 7-8.

[22] *July 1992 Notice*, 7 FCC Rcd at 4632.

[23] Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, CC Docket No. 92-135, Notice of Proposed Rulemaking, 7 FCC Rcd 5023 (Com. Car. Bur. 1992) and Erratum, 7 FCC Rcd 5501 (Com. Car. Bur. 1992); Report and Order, 8 FCC Rcd 4545 (Com. Car. Bur. 1993). Those mid-sized companies which adopt the incentive plan will file the 43-05 and 43-07 reports annually.

[24] Price Cap Performance Review for AT&T, CC Docket No. 92-134, Notice of Inquiry, 7 FCC Rcd 5322 (1992); Public Notice, 7 FCC Rcd 6084 (Com. Car. Bur. 1992); Report and Order, 8 FCC Rcd 5165 (1993). The Commission saw no need for major changes.

D. Quarterly Service Quality Report 43-05

1. Table I - Interexchange Access Service Installation and Repair Intervals

15. Table I of Report 43-05 gives data on LEC installation and repair performance for interexchange access service. For installations, LECs report their success rate in meeting their own standard interval commitments.[25] The *Notice* solicited comment on a new reporting requirement that eliminates any reference to the LEC's standard interval, and simply reports installation intervals in days. It also requested comment on whether measurements should be in calendar days, business days, or hours; and on classifications of types of service to be reported.[26]

16. Eleven parties, ten LECs and USTA, are strongly opposed to any change in the reporting of installation intervals.[27] On behalf of the carriers, USTA argues that this proposal appears to be an attempt to develop an installation interval standard. It advises that this revision does not take into consideration the differences among customer choices, nor the differences in measurements among the carriers (*e.g.*, some carriers measure circuits and some measure orders).[28] USTA and several LECs argue that a substantial percentage of installation intervals are customer-driven -- that is, that the customer, not the LEC, sets the installation date for new service.[29] Diversity of customers' needs and competition among market areas means that service objectives must be responsive to customer and market demands, according to most LECs. BellSouth suggests that, if the separate filing of installation intervals renders the 43-05 less informative, or cumbersome to use, the Bureau should require that standard intervals be noted in the 43-05 itself rather than in a separate paper filing.[30] USTA also states that such changes in reporting requirements are expensive, and may require extensive time and resources, because the service order systems from which the data are derived are complex. USTA fears that the proposed requirements will drive the carriers away from their own standard intervals, thus rendering determination of changes in service quality under price caps exceedingly difficult. USTA also states that this proposal is duplicative because the Regional Bell Operating Companies (RBOCs) already file quarterly installation measurements by service type in their ONA reports.[31]

17. ARINC and TCA support this proposed change. ARINC states that actual performance data will allow benchmarking among carriers, providing incentives for quality improvements.[32] TCA suggests that this change would improve the usefulness of ARMIS data because it would create uniformity and comparability among carriers.[33] In their reply comments, several carriers and USTA reiterate their position that current reporting requirements accurately reflect a carrier's success at providing installations at a rate that is at least satisfactory, and that modification of these requirements will serve only to create a national standard, and to destroy the continuity of the data.[34]

18. Pursuant to the Commission's direction to make at least units and methods of measurement uniform wherever possible, we will eliminate reference to the LEC standard interval and require the carriers to report installation intervals in actual business days in Table I.[35] We reject the notion that reporting the actual average interval in days can be equated to setting an installation standard. These modifications are reflected in the Attachment to this Order. Carriers currently report the number of orders or the number of circuits. We believe that it should be possible to achieve uniformity on the matter of orders or circuits, and will include this issue in a public notice to be released in the near future. Meanwhile, we will continue the current requirement, but adjust it to require a footnote to indicate orders or circuits. This change produces a mandatory footnote to row 110. Finally, we do not believe that reporting actual intervals will be burdensome because, as USTA argues, the BOCs are already collecting similar data for their ONA reports.[36]

19. Although the *Notice* proposed no changes in the Table I reporting of repair intervals, our review of filed data reveals that some carriers report hours on a "stopped clock" while others use a "running clock." As noted, we are endeavoring to achieve uniformity at least in the units of measure. Accordingly, and after conferring with the USTA working group, we are instructing carriers to report repair intervals using a stopped clock. The required measure is now defined as, "Interval measured in clock hours, excluding only time when maintenance is delayed due to circumstances beyond the LEC's control. Typical reasons for delay include, but are not limited to, premise access

[25] At present, these standard intervals are not included in the automated database; instead, LECs file paper copies of their standard installation intervals for various services in the public reference room of the Accounting and Audits Division of the Common Carrier Bureau.

[26] *July 1992 Notice*, 7 FCC Rcd at 4633.

[27] *See, e.g.*, BellSouth Comments at 7; Pacific Bell Comments at 5-6.

[28] USTA Comments at 5.

[29] *See, e.g.*, Ameritech Comments at 3; GTE Comments at 6; NYNEX Comments at 4-5; Pacific Bell Comments at 5; SNET Comments at 6; United Comments at 4.

[30] BellSouth Comments at 7. *Accord*, GTE Comments at 6; Rochester Comments at 3; Bell Atlantic Comments at 3; Ameritech Comments at 3; Southwestern Bell Comments at 2; SNET Comments at 6; Pacific Bell Comments at 5.

[31] USTA Comments at 6. *See* Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, Order on Reconsideration, 5 FCC Rcd 3084 (1990) (*BOC ONA Order on Reconsideration*) at 3096.

[32] ARINC Comments at 2.

[33] TCA Comments at 5.

[34] *See, e.g.*, NYNEX Comments at 3; GTE Comments at 4.

[35] We are aware that consumer requests can have an impact upon the average interval between order placement and actual delivery of the requested service, but this impact should be no greater when measuring actual intervals than when measuring the percentage of commitments met.

[36] USTA Comments at 7. Our requirements here are not duplicative of the ONA reporting requirements because the formats and levels of aggregation are different. In their ONA reports the BOCs file quarterly data on total orders, due dates missed, percent of due dates missed and average interval (in days) by service category. Use of work days or calendar days as a measure of average installation interval is left to the discretion of the reporting carrier. The BOCs may also report a second average interval that excludes customer-driven dates if they choose. *See BOC ONA Order on Reconsideration*. Also, GTE and the elective price cap LECs are not required to file ONA reports.

when a problem is isolated to the location, or absence of customer support to test facilities." This change is reflected in the Attachment to this Order.

2. Table II - Local Service Installation and Repair Intervals

20. For local service installations the LECs currently report their success rate in meeting their own standard interval commitments. As in the case of Table I, Interexchange installation, the *Notice*, by reference to the Table I proposal, suggested that reference to the LEC's standard interval be eliminated, and that the installation interval be reported in days. The commenting parties referred to their comments on the Table I proposal, or addressed interexchange and local reporting requirements for installations as one issue.[37] As in our revision to Interexchange Access installations in Table I, we will eliminate reference to the LEC standard interval and require the carriers to report installation intervals in actual business days in Table II. These revisions are reflected in the Attachment to this Order.

21. Currently the repair interval section of Table II does not include any time measurement. It reports only the number of trouble reports recorded by the reporting carrier during the reporting period. The *Notice* proposed that this table be modified so that the local service repair reports include a measurement of the repair interval, in hours to the nearest tenth.[38]

22. Most of the LECs, and USTA, question the value of this additional reporting.[39] USTA states that its arguments against installation intervals in Table I also apply to Table II, and adds that local service monitoring is beyond the scope of price cap regulation.[40] USTA also argues that not all exchange carriers can provide data on repair intervals and that provision of such data would be extremely burdensome.[41] SNET claims that the only meaningful repair interval measurement is for out-of-service troubles.[42] BellSouth cautions that if the actual interval is measured, we must specify how it is to be measured.[43] BellSouth is wary of using a running clock because, although it sees its value for reviewing an individual LEC's performance over time, it fears that it would be inappropriately used for benchmarking performance among LECs.[44] Bell Atlantic argues that it already files similar information in its ONA reports.[45] Ameritech, SWBT, Pacific Bell and GTE state that they can, given enough lead time, provide these data in hours to the nearest tenth.[46]

23. TCA and NYNEX support the addition of time measurement for local service repairs. TCA suggests that the data be provided by residential service, standard business service, PBX trunk and Centrex service.[47] NYNEX states that the addition of a time measurement, unlike the proposed change to the installation intervals, is a minor change which will enhance the value of the report.[48] NYNEX also proposes that such intervals be measured, based on a "running clock," from the time a trouble report is received to the time the trouble is cleared and accepted by the customer. Several LECs comment that they would be willing to provide the data.[49]

24. We have reviewed the pleadings and conferred with the industry working group. We will eliminate reference to carriers' standard intervals, and require the carrier to report installation intervals in actual business days in Table II.[50] We will not, however, require that the data filed be separated into standard business service, PBX trunk and Centrex service; the current segregation of these data into residential and business categories is sufficient for our needs.

25. We will also implement our proposal and require a measurement of the repair interval in hours to the nearest tenth. We believe that reporting repair intervals requires a measurement of actual time elapsed, not just the number of troubles, if it is to provide meaningful data in our attempts to monitor carrier performance under incentive regulation. Further, we agree with commenters that out-of-service troubles are more demanding of our scrutiny, and should be monitored separately. Therefore, we are establishing two sub-classifications of 'total trouble reports' -- 'out-of-service reports' and 'all other.' These modifications are set forth in the Attachment herein. Finally, we conclude that these data are not duplicative of the ONA reports because ONA reports are not filed on a study area basis, are not required of all price cap LECs, and use an interval measure (days) that is too long for our purposes here. ONA reporting is designed to serve particular purposes in the ONA scheme, as the price cap monitoring program serves particular purposes in the price cap plan. The differences between the purposes being served explain and justify the differences between these reports.

26. We also wish to clarify the definitions of 'initial' and 'repeat' trouble reports; evaluation of the filed data has brought to our attention the fact that carriers may be defining these terms differently. An initial trouble report is the first (and in many cases the only) trouble report on a particular trouble. This 'initial' listing does not include a count of repeat troubles. A repeat trouble report is a report on a trouble within 30 days after the initial report on that trouble. It is a 'repeat' trouble whether the trouble has not been attended to, or has been attended to with unsatisfactory results. It is our understanding that some carriers record a third kind of trouble report, the 'subsequent' trouble report, defined as a trouble report on a trouble already reported but not yet addressed by the company. We believe that if this subsequent trouble report occurs within 30 days after the initial report, it is a repeat trouble report and should be recorded as such. This is a straightforward reading of the definitions included in the instructions for 43-05 Table I and Table II.

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[37] *See, e.g.*, GTE Comments at 7; USTA Comments at 7; TCA Comments at 5.
[38] *July 1992 Notice*, 7 FCC Rcd at 4633.
[39] *See, e.g.*, Bell Atlantic Comments at 3-4; BellSouth Comments at 10-11.
[40] USTA Comments at 7.
[41] *Id.* at 8.
[42] SNET Comments at 7.
[43] BellSouth Comments at 10.
[44] BellSouth Comments at 10.
[45] Bell Atlantic Comments at 3.
[46] Ameritech Comments at 4; SWBT Comments at 3; GTE Comments at 7; Pacific Bell Comments at 7.
[47] TCA Comments at 6.
[48] NYNEX Comments at 5.
[49] SWBT Comments at 3; GTE Comments at 7; United Comments at 5.
[50] All parties are in agreement that these installations will be reported on the basis of number of orders, not 'orders or circuits.'

3. Table III - Trunk Blockage

27. The LECs currently report how many trunk groups they have, how many they measure, how many of those exceeded servicing thresholds for one or three months, and how many exceeded design blocking objectives for three months. In the *Notice*, we proposed to collect data on "total trunks, including high usage trunks" as well as "final, full and non-alternate route trunks," breaking these two types of trunks down into subtypes, as was done in the pre-divestiture reports.[51] The *Notice* also proposed to add a table for call completion ratios.

a. Trunk Groups

28. Four LECs are opposed to providing information such as that included in the pre-divestiture reports, stating that these data are burdensome and inappropriate.[52] No commenter asserted the need for such data.

29. We are unable to conclude, from the evidence before us, whether any modification of the trunk blocking report is needed. We therefore defer this issue for further consideration. It is our intention to convene a working group and, through discussions and further consideration, gather enough information to allow us to make a reasoned conclusion here.

30. In the meantime, however, it seems a relatively easy task to make the data we currently collect more usable. We originally required that each carrier footnote the standards it used for design blocking objectives (DBOs), when reporting the number of common trunk groups which have exceeded the equipment design blocking objectives for three or more consecutive months. After a review of carrier submissions and discussions with the industry, we now modify the reporting requirement as follows: carriers will report the number of common trunk groups that have exceeded a DBO of .5 percent for feature group D (or mixed usage trunks that include any feature group D), and that have exceeded a DBO of 1.0 percent for all other (non-FGD).[53] Similarly, the carriers were originally instructed to footnote their servicing thresholds. After reviewing these submissions, we will now require that carriers report numbers of trunk groups exceeding a servicing threshold of 2% for feature group D, and 3% for all other (non-FGD). Carriers using other thresholds should footnote them. These changes are reflected in the Attachment to this Order.

b. Call Completion Ratios

31. Six LECs oppose establishment of a call completion ratios table, stating that such a requirement would be burdensome and would not reflect LEC performance.[54] BellSouth states that it can provide information showing the percentage of all call attempts which it hands off successfully to the originating interexchange carrier, and it also has information showing the percentage of all calls delivered by interexchange carriers to BellSouth in the terminating exchange which are successfully delivered to and answered by the end user.[55] BellSouth argues that this information would provide a better means of evaluating a LEC's performance than the Bureau's proposals. BellSouth, like the other LECs, states that call completion ratios do not provide a useful picture of carrier performance because end-to-end call completion can be affected by other LECs and interexchange carriers.

32. TCA endorses our proposal, stating that call completion ratios provide comprehensive indicators of overall trunk performance reliability.[56] TCA also suggests that we consider whether to require separate reporting of calls that are handled entirely by the carrier and calls in which an interexchange carrier is involved.

33. We are without adequate information to draw a firm conclusion regarding the need for call completion reporting. We defer this issue, too, to future consideration.

4. Tables IV and IV-A. - Total Switch Downtime

34. The LECs currently report switch downtime disaggregated in two ways: switches are broken into groups according to the switch size (number of lines served) and by MSA or non-MSA. The *Notice* proposed to add information on whether an outage occurs at a switch that has experienced downtime within the last month (or quarter), and on the type of switch.[57]

35. All the LECs except Bell Atlantic agree to provide information on whether a switch has previously experienced downtime,[58] but oppose the second part of this proposal, providing information about the type of switch.[59]

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[51] *July 1992 Notice*, 7 FCC Rcd at 4633.

[52] Pacific Bell Comments at 9 (claiming that these data, categorized by subtype, are competitively sensitive because information on trunking details can disclose the extent of traffic in a geographic area, the kind of traffic being carried, and anticipated traffic growth); BellSouth Comments at 11 (the current monthly report provided by the LECs to the interexchange carriers would provide better information); NYNEX Comments at 7 (it does currently produce the number of trunk groups and trunks by category, but such data, if needed, should be collected in the Infrastructure Report). *See also* Ameritech Comments at 4.

[53] Two carriers currently use the feature group D standard of .5% for all trunks; the others use the 1.0% DBO for 'other.' Those carriers that use a DBO other than 1.0% for 'other' should footnote their DBO; carriers using the 1.0% DBO for 'other' need not footnote it.

[54] *See, e.g.*, Pacific Bell Comments at 10 (limited call completion ratio data could be gathered, but only at significant cost); SWBT Comments at 3 (call completion ratios would be difficult to measure consistently and would not be reflective of LEC service quality); Bell Atlantic Comments at Appendix p.4 (call completion ratios have little value in a multi-vendor environment, because any one of the carriers transmitting a call could cause blockage); *accord*, Ameritech Comments at 4.

[55] BellSouth Comments at 12. BellSouth does not have information showing the percentage of all call attempts originated in its serving areas that are answered by end users in other LATAs.

[56] TCA Comments at 10.

[57] *July 1992 Notice*, 7 FCC Rcd at 4633.

[58] All the LECs except Bell Atlantic are willing to list switches consecutively, if those switches had repeated outages during the quarter. *See, e.g.*, NYNEX Comments at 8; SWBT at 4. Bell Atlantic opposes such reporting. Bell Atlantic Comments at 5 (asserting that multiple outages in one switch may be related to upgrading of the switch, and should not be noted punitively, or that multiple outages may in fact be unrelated and therefore not noteworthy).

[59] Some of the LECs are willing to report on whether those switches listed are analog or digital, but they strongly oppose reporting on the switch manufacturer, model number, age, capacity, upgrades and SS7 or equal access capabilities. *See, e.g.*, USTA Comments at 10. NYNEX supports our proposal, but

They argue generally that these data are irrelevant and unnecessary.[60] These carriers claim that competition between manufacturers should result in quality products, and that "reporting on" the manufacturers in the context of this monitoring program would be inappropriate.[61] The LECs note, further, that they provide performance reviews to the manufacturers themselves. In some cases, according to the LECs, manufacturers incorporate LEC requirements in their own manufacturing standards.[62] TCA supports the full proposal, stating that the additional information would enable us to identify problems inherent in certain types of switches and thus result in improved switch designs.[63]

36. Upon further consideration, we have determined that some of the additional information proposed in the *Notice* is not necessary. We suggested a requirement that LECs indicate switches experiencing more than one outage in a quarter; however, since our database allows us to pull data on switches that have experienced multiple switch outages of two minutes or more within a given period, there is no need to require the LECs to provide this information as a separate item. We also suggested reporting of additional information about switch downtime incidents in Table IV-A, incidents of two minutes or more. These listings currently include the Common Language Location Identifier (CLLI) code listing. This eleven-digit switch identification provides some of the information that the *Notice* suggested, including exact location, type of switch, and whether analog or digital.[64]

37. We also suggested the possibility of our adding further data requirements in this table, including switch manufacturer, upgrades, and so on. We conclude, based on a review of the pleadings and of the data before us, that it is not necessary or appropriate to require such information, at least at this time. We believe that the information included in the CLLI code is adequate to our monitoring purposes. We also note that the ECSA working group is encouraging the sharing of pertinent information among carriers. Should we see patterns of downtime problems emerging, we would of course be free to request further, detailed information. In the meantime, we will make no change to this table.

38. There are some other minor adjustments to be made in the reporting requirements for Table IV and Table IV-A. One is that carriers suffering multiple serial outages at a single switch (on a switch that is being serviced or upgraded, for example) have reported these incidents differently -- some carriers report a single long outage, while others report a series of short outages. This difference in reporting explains the discrepancies in data that we have noted. We now clarify that if service is restored, even momentarily, the downtime incident ends; if service is then lost again, a new downtime incident begins. The instructions are clarified to explain this; *see* Attachment. In addition, carriers are instructed to except Table IV-A data from the general instruction to provide roll-ups of all data to the company level. Roll-ups are calculated by adding the data for each individual row item for each study area in an operating telephone company. No roll-ups are to be provided for Table IV-A because the essence of Table IV-A is to provide information on individual incidents; the cumulative data for the study area and the company are provided in Table IV and the roll-up of Table IV.

5. Additions to Report 43-05

39. In the *Notice* we asked whether additional factors, such as information on transmission facilities breakdowns or signalling system breakdowns, might be useful in measuring network reliability.[65]

40. There is some support in the pleadings for additional SS7 reporting in the 43-05 Report. NYNEX recommends addition of a signalling system failure report for all carriers, including interexchange carriers and competitive access providers.[66] AT&T suggests additional information concerning deployment of Service Switching Point (SSP) hardware to Channel Signalling System 7 - Network Interconnect (SS7-NI), stating that these data can be used to estimate the amount of progress the LECs have made in reducing access delay.[67] ARINC urges the Commission to collect data regarding the performance of Signalling System 7 (SS7) in order to provide information that could be used to prevent SS7 failures and the often major outages generated by these failures.[68] BellSouth, United and SNET are all opposed to additional reporting requirements for SS7 data because such additions would be inconsistent with current reporting requirements, and expensive, while providing little or no benefit.[69]

41. NYNEX supports the addition of a tandem outage report.[70] No party supports the addition of facilities failure reports, and NYNEX argues that such a report would be extremely burdensome to all carriers.[71] Bell Atlantic suggests that such information collection should be addressed in a separate proceeding, while SWBT states that consider-

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suggests that the information be reported in Table IV.A, rather than in Table IV. NYNEX Comments at 8.

[60] *See, e.g.*, GTE Comments at 10. GTE suggests that such a requirement goes beyond the intent of the price cap monitoring program and is not needed.

[61] *See, e.g.*, Pacific Bell Comments at 11. Pacific Bell asserts that provision of any but the most generic information about a switch experiencing downtime could be misleading if failure is attributed to the switch type or switch vendor. Pacific Bell also asserts that detailed data would make public information that is proprietary and competitively significant.

[62] *See, e.g.*, SWBT Comments at 4.

[63] TCA Comments at 9 (that the data might show that certain switch models suffer a disproportionate number of outages).

[64] The first eight digits indicate the locality of the switch. The last three digits of the standard eleven-digit CLLI code identify the specific switching entity. Analog stored program control (SPC) switches are identified with a C; digital SPC switches are shown by a D; and remote switches, which may be analog or digital, are identified by an R or a W within these last three digits. Electromechanical switches are also identified: step-by-step entities are designated "S" or a number from 2 to 9, and crossbar switches are shown by an M. Not all price cap LECs conform to these specifications, but companies that depart from the norm must provide information concerning the differences in their coding in a footnote to this column in Table IV-A.

[65] *July 1993 Notice*, 7 FCC Rcd at 4634.

[66] NYNEX Comments at 9.

[67] AT&T Comments at 2.

[68] ARINC Comments at 3.

[69] BellSouth Comments at 13 (retain continuity of reports, at least during initial four-year period of LEC price caps); *accord* United Comments at 6; SNET Comments at 2 (restrict any new reporting requirements to mandatory price cap LECs only). These parties oppose the addition of transmission facilities outage reporting for the same reasons.

[70] NYNEX Comments at 9.

[71] *Id.*

ation of such a data collection is premature because the Network Reliability Council is currently considering reporting requirements for these kinds of outages.[72]

42. The substantial duration and scope of SS7-related outages in the summer of 1991 persuade us that it is necessary to monitor the deployment and performance of the SS7 network carefully. We believe that history refutes Bell Atlantic's suggestion that such monitoring procedures are premature.[73] We also believe, however, that recent modifications in the requirements of the Switch Downtime Report[74] to include downtime causes, one of which is SS7-related, provide at least a modicum of information about this signalling network. We also note the substantial information filed by LECs in response to a recent data request by the Federal-State Joint Board regarding deployment of the SS7 network.[75] And, as noted, the Network Reliability Council has made recommendations regarding outage reporting that may affect the ARMIS collection and/or the outage reporting collection being maintained by ECSA.[76] Pending a more thorough review of those recommendations, we believe that our current reporting requirement adequately serves to indicate the overall performance of this important network component.

E. Semi-Annual Service Quality Report 43-06

1. Table I - Customer Satisfaction

43. Table I of Report 43-06, which reflects the results of customer satisfaction surveys conducted by individual carriers and is not standardized, is currently collected on paper but not in an automated format under ARMIS. The *Notice* requested comment on standardized customer categories, overall quality measurements that customers can be asked about, and some common measure of satisfaction.[77]

44. TCA suggests a survey that it has devised for dissemination among ratepayers.[78] The LECs are all opposed to a standardized survey because, they state, it would cause customer confusion and be a burden on them and on the public.[79] The LECs argue strongly that effective customer surveys are carefully designed and administered to reflect the company, its service area and population, so that the survey and its data collection and analysis must be tailored to the demographics of each individual market.[80] GTE argues that customer satisfaction reports have no place in price cap reporting because those reports are uniquely designed by each LEC to help it identify and meet the needs of its customers.[81] USTA is concerned that creation of a valid standardized survey would be time-consuming and expensive; it doubts that such a survey could be implemented in less than eighteen months.[82] Bell Atlantic and BellSouth express willingness to explore the possibility of developing a standard means of reporting the results of the LECs' customer satisfaction surveys.[83]

45. It has never been our intention to create, and impose upon the LECs, a standardized customer satisfaction survey. We are aware that customer satisfaction surveys are not only idiosyncratic to each LEC, but are an essential means of a company's ascertaining its own areas of strength and weakness, and underlie planning and administration. We know, too, that the design and use of these surveys are periodically changed. Each carrier designs surveys to suit its needs and the needs of its customers and service areas. Our monitoring system, designed to draw from data the carriers collect and use for their own purposes rather than to impose new data collection obligations, should not create or impose a survey structure that is otherwise useless to the LECs. Instead, our intention is to draw from existing customer satisfaction surveys such "common denominator" groupings, of both respondents and areas of concern, as can be seen as pertaining to all carriers and all customers. It is important, however, not to make these groupings so general as to be meaningless.

46. In service of this goal, we have established general reporting terms which set three categories of customer respondents -- residential, small business, and large business. We recognize that these terms are used and defined differently by different LECs, and that some LECs have additional categories. However, the similarities among the classifications are more substantial than the differences, and we will therefore accept the LECs' current definitions of these categories for purposes of reporting the results of their customer satisfaction surveys.

47. All LECs currently report residential customers based on their own definition of residential, and they should continue to do so; we believe that little or no differences will be found from one carrier to the next in this definition. With regard to categories of business users, some variations exist, but we find them to be acceptable for our purposes here. Current data indicate that business customer satisfaction is extremely high and is not a factor that demands increased Commission scrutiny, especially since competition is most prevalent in these areas. All LECs should therefore continue to use their own definitions of small business.[84] And, although 'large business' may mean

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[72] Bell Atlantic, Appendix to Comments at 6; SWBT Comments at 5.

[73] We also reject AT&T's suggestion that additional SS7 reporting is needed in the Report 43-05 Table IV and IV-A outage reports to measure the LECs' success in decreasing access time by deploying SS7. AT&T should refer to the 43-07 Infrastructure Reports, Tables I, II, and III, for such data.

[74] *March 1992 Notice*, 7 FCC Rcd at 3590.

[75] *See* March 26, 1993, letter from Kenneth P. Moran to the BOCs, United and GTE requesting data regarding cost and usage characteristics of packet switching networks and certain general support facilities. Data submissions were filed in June 1993 and are presently under review.

[76] Network Reliability: A Report to the Nation, A Compendium of Technical Papers, June 1992, Presented by the FCC's Network Reliability Council, Sections B and C. This study recommends that carriers and suppliers improve their own data collection on switch failures, and that the industry improve its information sharing among all segments. It also recommends that carriers identify the root causes of procedural errors and reduce the number of scheduled outages, and that the reliability of software and hardware be improved.

[77] *July 1992 Notice*, 7 FCC Rcd at 4634.

[78] TCA Comments at 12.

[79] *See, e.g.*, Bell Atlantic Comments, Appendix at 7; BellSouth Comments at 13.

[80] *See, e.g.*, Pacific Bell Comments at 13-14; Bell Atlantic Comments, Appendix at 6.

[81] GTE Comments at 10.

[82] USTA Comments at 12.

[83] Bell Atlantic Comments, Appendix at 7; BellSouth Comments at 14.

[84] While a LEC serving primarily urban areas may well have "small business" customers that a LEC serving rural areas would call "large business" customers, for example, each LEC has determined, in its own customer population, what the

different things to different LECs, that category will always include the LECs' larger business customers, and the various definitions are thus similar enough to meet our monitoring purposes.[85]

48. We have also developed four general areas of concern to be reported by each LEC -- overall, installations, repairs, and business office. We believe that whatever customer categories an individual LEC may use, and whatever areas of concerns may be identified by a survey, it should be possible to draw from the specific surveys and survey data to provide information in these general areas. "Overall" should be a measure of overall satisfaction with the telephone company; installations and repairs are self-evident, and we believe these general categories to be in use by all LECs. "Business office" means any contact with the telephone company business office, for example for questions involving a bill, information regarding the availability of new services, or participation in a neighborhood association.

49. Further, we are requiring LECs to report the number of customers surveyed, and the percent dissatisfied. Although the LECs have historically reported 'percent satisfied,' this change to 'percent dissatisfied' is necessitated by the differences not only among the LECs, but also between traditional surveys (measuring 'satisfaction') and newer surveys (measuring 'meeting or exceeding expectations.') The result is that an "approval" rating is very hard to define. About half the price cap LECs have developed new, more stringent survey measures in the course of the last two years.[86] Some survey responses include two possibilities (satisfied or not), others include five or six, ranging from very satisfied (or far exceeded expectations) to very dissatisfied (or totally failed to meet expectations). Further, some LECs using the same range (one to five, for example) count three as satisfied, while others do not. Our "dissatisfied" or "negative" count assumes that all LECs' measures can be divided between those that voice dissatisfaction and those that do not (whether they voice satisfaction *per se* or not). We believe that this measure will generally reflect traditional satisfaction measures, but will also provide an adequate representation of the newer, more stringent surveys. It should also provide substantial continuity with previously-filed data, through measuring the inverse of those reports. In the interests of this continuity, we are requiring all LECs to double-file Table I when they first use our new electronic filing; they should file the electronic and paper copies of this new format, along with paper copies of their traditional format, the first time they use the new table. The new Table I is set forth in the Attachment herein.

2. Table II

a. Dial Tone Response

50. Table II displays measurements of the provision of dial tone for an originating call attempt within a specified period of time; it relies on the industry standard of three seconds. The results of the measurements are shown as a percentage of offices which meet the LEC's standard for providing dial tone within three seconds of lifting the telephone "off-hook." The measured performance is derived from call attempt samples taken during the central office busy hours; carriers vary in the number of offices they test, the number of samples they take, and the standard they establish for an end office (the percentage of the sample calls that must achieve the 3-second standard. An office is considered to pass the performance test if a specified percentage of test calls receive dial tone within the three second criterion). The *Notice* proposed to change this table to measure actual dial tone, in seconds to the nearest hundredth, for a number of test calls based on a percentage of total calls.[87]

51. All the LECs oppose the proposed reporting, stating that such a requirement would be unreasonable and burdensome.[88] USTA explains that changing this measurement as proposed would necessitate the development of new software by equipment vendors, and nationwide generic updates.[89] TCA supports our proposal, stating that reports based on actual time will permit meaningful benchmarking of the carriers, assuming that tested end offices are selected on a representative basis.[90] The LECs respond to TCA's proposal by stating that reports based on actual time would be expensive, meaningless and inappropriate. They assert that "benchmarking" is not the purpose of the Service Quality reports.[91] As noted at para. 8, *infra*, we believe that uniformity is much to be desired, and that benchmarking is a foreseeable and acceptable outcome of this.

52. We have reviewed the pleadings here, and have surveyed what we know of the relevant technology. We find that we are not in possession of adequate information to conclude whether this report should be modified, and if so, how. We accordingly defer consideration of this issue to a future time.

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boundaries of "small business" are, and we believe those determinations should be maintained. If a LEC defines as a 'small business customer' one who is more than 10 percent the size of its largest 'large customer,' that LEC should footnote the 'small business' category and explain its definition.

[85] We are aware that some LECs have a category beyond 'large business,' of super business' or 'super-large business.' LECs using such categories are instructed to include these largest customers in the general large business category we establish here.

[86] For example, in the fall of 1991 Bell Atlantic changed from its traditional "percent satisfied" survey to a new survey that measured customer expectations and the company's success in meeting them. Bell Atlantic's filing of fourth quarter 1991 data shows both the old and the new surveys, and reflects a drop of about 2% in each category reported. NYNEX, Ameritech, and SWBT have made similar changes.

[87] *July 1992 Notice*, 7 FCC Rcd at 4634.

[88] *See, e.g.*, BellSouth Comments at 14 (stating that measurement of actual dial tone response time would be extremely costly with no appreciable customer benefit); NYNEX Comments at 10 (suggesting that we eliminate Table II because there is virtually no dial tone delay exceeding the current three second standard measurement).

[89] USTA Comments at 13 (requesting that any costs involved in this change be treated as exogenous).

[90] TCA Comments at 12-13.

[91] *See, e.g.*, Ameritech Reply Comments at 6; USTA Reply Comments at 8-9.

b. Table II - Transmission Quality

53. Table II, Transmission Quality, shows the percent of offices and the percent of trunks meeting the carrier's own standards for each of five measures of analog transmission quality: loss, noise, balance, gain/slope and C-notch. The *Notice* proposed that transmission quality be measured in terms of actual performance for each of these, rather than of meeting the carriers' self-imposed objectives.[92]

54. All the LECs oppose this proposal as burdensome and of limited value.[93] The carriers question the usefulness of increasing reporting requirements for analog transmission quality in an increasingly digital network.[94] Two carriers state that it is possible for them to provide these data as proposed, but that to do so would be time consuming and that the value of the resulting data is questionable.[95] TCA strongly supports our proposal, saying that the current requirements do not allow for benchmarking or informed analysis of individual carrier data.[96]

55. Again, we find that the information available to us, and our ability to review it, are inadequate to allow us to require modification of the reporting requirements for analog transmission quality, or to draw any conclusions about the practicability or desirability of instituting a digital transmission quality reporting requirement. Accordingly, we defer this issue for future consideration.

3. Additions to Report 43-06

56. The *Notice* sought comment on whether bit error rate and availability measures -- both measures used on lines providing high-speed data access -- should be included in this monitoring plan. The *Notice* expressed a willingness to revisit this issue because rapid technological development may have increased the LECs' ability to provide such data.[97]

57. Most of the LECs assert that this is not the case. USTA claims that even though the technology to provide these measurements does exist, it is not generally available because of its prohibitively high cost.[98] Bell Atlantic states that non-intrusive testing is under development, but says that it has no plans to deploy such systems because of the high cost involved.[99] BellSouth and USTA note that the Exchange Carrier Standards Association T1Q1.4 Committee is currently addressing actual performance limits for the defined digital transmission quality parameters, and that it is therefore premature for us to address this issue.[100] USTA points out that measurements for digital trunk transmission quality are not yet available for general use in the telephone network. Pacific Bell suggests that a better indicator would be to measure Errored Seconds (ES) and Severely Errored Seconds (SES), since Bit Error Rate (BER) for high speed digital services in the modern network can be measured only in an out-of-service condition, whereas ES and SES can be accurately measured in-service based on modern framing techniques (the ES and SES performance parameters are derived from data based on the customer's actual signal), according to Pacific Bell.[101]

58. We have seen other documentation, however, such as manufacturers' specifications, indicating that the technology currently exists to allow non-intrusive, reasonably-priced on-line measurement of digital transmission quality.[102] This conflicts with the LECs' statements that non-intrusive measurement is not yet possible.

59. The technical aspects of this issue, like the other transmission quality measurement issues, are deferred for future discussion and consideration. We note, however, that we continue to believe that high speed data transmission is generally a service provided on special access lines to large, sophisticated customers, and is usually among the first of a LEC's services to face competition. The purpose of our monitoring plan is to assure that incentive regulation is not provoking a degradation of the network or a falling off of infrastructure investment. When we consider this issue further, we will seek to determine whether digital transmission quality is a proper concern of this price cap LEC monitoring plan, and then the extent to which such measurement is possible and desirable.

F. Infrastructure Report (43-07)

1. Table I - Switching Equipment

60. Table I collects data regarding switch deployment and capabilities. The *Notice* explored the possibility of adding data to this table to reflect the deployment of Switched Multi-Megabit Data Service (SMDS) and Frame Relay service.[103]

61. The LECs are opposed to disclosing detailed data on SMDS and Frame Relay, claiming that such data are highly sensitive because these services are often related to nonregulated activities, and reporting these data could therefore give their competitors an unfair advantage.[104] BellSouth states that it would not object to reporting at the study area level (but not more disaggregated) for metropolitan areas where deployment of SMDS or Frame Relay has already taken place.[105] Pacific Bell suggests that we collect data on the number of ports equipped for SMDS and Frame Relay.[106]

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92 *July 1992 Notice*, 7 FCC Rcd at 4634.

93 *See, e.g.*, USTA Comments at 13; SWBT Comments at 7.

94 *See, e.g.*, NYNEX Comments at 11 (stating that analog tests should be replaced by other, yet-to-be defined digital standards); Pacific Bell Comments at 17 (questioning the applicability of analog measurements to an evolving digital network).

95 Pacific Bell Comments at 17; NYNEX Comments at 10-11.

96 TCA Comments at 13.

97 *July 1992 Notice*, 7 FCC Rcd at 4634.

98 USTA Comments at 15.

99 Bell Atlantic Comments, Appendix at 8; *See also* GTE Comments at 13 (stating that the cost of deploying digital performance monitoring and testing systems is prohibitive.); Pacific Bell Comments at 18 (pointing out that the additional equipment [to provide continuous performance monitoring] is very expensive and not suitable for universal deployment.)

100 BellSouth Comments at 15; USTA Comments at 14.

101 Pacific Bell Comments at 18.

102 *See, e.g.*, 3M Product Bulletin describing 1150 Test Platform for digital and analog circuit testing. Present applications are listed as including ROTL and 105 farend testlines, 56/64 Kbit bit error rate testing to 108 testlines, and voice band data testing at V.32 and FAX rates. Planned future applications are listed as including ISDN testing, SS7 verification and testing, DS0, DS1 and DS3 performance monitoring, and CCITT compatibility.

103 *July 1992 Notice*, 7 FCC Rcd at 4634.

104 *See, e.g.*, SWBT Comments at 8; GTE Comments at 14.

105 BellSouth Comments at 16.

106 Pacific Bell Comments at 19 (cautioning that the switching nodes are deployed in the same manner as access tandems, so reporting of MSA/non-MSA would not be possible).

62. In its Reply Comments, TCA asserts that the LECs' argument that certain data are competitively sensitive is without merit because there is currently no competition at the local level. TCA also states that the LECs have offered no evidence to indicate that reporting these data would inhibit their competitive ability.[107]

63. We believe that infrastructure reporting should be designed to allow the Commission and the public to monitor the speed and effectiveness with which reporting carriers make new technologies and services of use to and available to the public. We reject TCA's assertion that there is no competition in local telephone services; in fact, it is precisely in the provision of services like frame relay that competition is most intense, and we acknowledge the sensitivity of the LECs' position as they face increasing competition, especially regarding these services that are likely to be related to nonregulated and highly competitive services. We find, however, that the information we have before us is inadequate to allow for a determination of the form that SMDS and Frame Relay reporting should take. We accordingly defer such determination to a future time.

2. Table III - LEC Call Set-Up Time

64. Table III reflects the LEC portion of post-dial delay -- that is, LEC call set-up time, the interval that begins when the caller completes dialing and ends when the call is delivered to the interexchange carrier's point of presence (POP). Our survey of filed data indicates that this table is often being reported in a way that makes the data of little interest or usefulness -- that the LECs' compliance with the reporting requirements is not producing a useful indication of the LEC's average or typical call set-up time. The *Notice* requested comments on modifications to this table that would make it more informative and useful, without imposing undue burdens on the reporting carriers.[108]

65. All of the LECs except Pacific Bell are opposed to any modification of Table III.[109] Pacific Bell recommends that the Commission require actual call set-up data from the Service Evaluation System (SES) for those companies that have this technology in place.[110] Bell Atlantic argues that provision of actual measured data is impossible at this time.[111] Southwestern Bell recommends that we eliminate Table III.[112] USTA comments that without knowing the specific concerns of the interested parties expressing dissatisfaction with this table, it is difficult to comment on any modification.[113] NYNEX comments that while Bellcore has updated the 'theoretical' call set-up time for certain switches, inclusion of this updated information would make it difficult to evaluate whether call set-up time has improved under price caps as older technologies are replaced and SS7 is deployed.[114] The remaining carriers claim that reporting actual call set-up time would impose an expensive and unjustified burden.[115] USTA states that the costs outweighed the benefits in 1991 and that there has been no change since then.[116]

66. LEC Call Set-Up Time is an essential measure of the LEC's provision of quality service. We would require actual measurements if we thought the LECs could provide them, but it is our understanding from the record in the service quality proceeding that only one company can do so. We do not intend to impose a reporting requirement that would require deployment of additional equipment or systems for the sole purpose of meeting our filing requirement. Still, we are convinced that the LEC Call Set-Up Time Table, currently of little use, can, with minor modification, provide needed information. We believe that it is shortcomings in the instructions for filing, rather than in LEC compliance, that have resulted in the decreased usefulness of these data. The Bureau's intention was that standard measures would show the approximate set-up time for a call made on a particular kind of switch, and routed via one of a number of routes. The LECs would provide these standard times, and would calculate the percentage of their traffic that fit each combination of switch and route. In this way, each LEC would effectively record its total-network average call set-up time.

67. We do not suggest that the data presently provided are of no interest; it is clear that deployment of new technologies substantially reduces set-up time, for example. Deployment records of digital switches and of SS7 provide clear examples of the benefits to call set-up time of new technologies. Nonetheless, we believe the information in this table will be even more useful if we make modifications to effect the kind of calculation we originally envisioned, and we state now our intention to do so in a timely way, beginning with publication of a public notice soliciting comments, so that 43-07 Reports filed in June 1994 may reflect these changes.

G. Other Matters

68. In Report 43-07, Table IV, we currently collect data concerning access lines in service, access line gain, and total gross capital expenditures. The *Notice* proposed no changes to this table. In its comments, however, BellSouth suggests that this table be eliminated because, it argues, the table is "redundant to information reported elsewhere."[117]

69. We reject BellSouth's suggestion. Although the amount on row 0540, Total Gross Capital Expenditures, is reported on row 260, column (ac) of the 43-02 USOA Report, we consider it necessary to include this amount in the Infrastructure Report, for purposes of intra-Report reference. We do not see that this inclusion can be much of a burden to provide, since the same number is already reported in the USOA Report, Row 0531, Access Line Gain.

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[107] TCA Reply Comments at 5-6.

[108] *July 1992 Notice*, 7 FCC Rcd at 4635.

[109] *See, e.g.*, BellSouth Comments at 17 (arguing that post-dial delay is not a measure of service quality provided by the LECs because it can result from terminal equipment deployed by the customer or from the network design of the interexchange carriers); GTE Comments at 15 (stating that measurement of post-dial delay places an unjustified burden on the reporting carriers and that the current report is satisfactory and meets the need for which it is intended).

[110] Pacific Bell Comments at 20.

[111] Bell Atlantic Comments Appendix at 9 (arguing that the LECs were unable to provide these data last year and that this is still the case today).

[112] SWBT Comments at 9 (since the LECs cannot measure actual time using live traffic, the data that are reported are of limited value).

[113] USTA Comments at 15; *see also* GTE Comments at 14.

[114] NYNEX Comments at 12; *see also* BellSouth Comments at 17.

[115] *See, e.g.*, GTE Comments at 15 (arguing that the exchange carriers cannot measure call set-up time without expensive and time-consuming procedures).

[116] USTA Comments at 15-16.

[117] BellSouth Comments at 17-18.

is not reported elsewhere. Although Total Access Lines in Service are collected both in row 140 of 43-05 and row 120 of 43-07, we will retain 43-07, Table IV in its current format.[118]

70. We note, too, the requests of several parties that the Bureau provide some analysis and published tables drawn from the monitoring program data. ARINC suggests that we provide data analyses;[119] TCA suggests that we graph all relevant data to provide published "report card" reports, and that we "rank" price cap LECs on each item of measurement.[120] It is our intention to provide regular summary and analytical publications regarding the service quality and infrastructure data filed in the ARMIS Reports 43-05, 43-06, and 43-07. At the time of their publication, parties will be free to comment on their contents and to suggest additional reports or analyses.

III. CONCLUSION

71. In the *Service Quality Order*, we stated:

> The Bureau, and the Commission, may find it necessary to revisit these matters periodically, for example to modify reporting requirements as technology and the industry change. We will also be intent on evaluating these reporting requirements as they are put into practice, and as the ARMIS database is developed. Finally, as noted herein, the Bureau and the Commission stand ready to revisit the issues of geographic and service disaggregation, LEC call set-up time, trunk blockage reports, fiber deployment, and other reporting requirements, if reevaluation is warranted.[121]

In this Order we are modifying the service quality and infrastructure filing requirements in service of improving the data collection's reflection of a constantly-changing network, and to increase the uniformity and quality of the information available to the Commission, state regulators, users, and other interested parties. We are deferring to future proceedings consideration of several other related matters.

IV. PAPERWORK REDUCTION ACT

72. On July 20, 1989, the Office of Management and Budget (OMB) approved the Commission's proposed information collection requirements contained in the *Second Further Notice* on price cap regulation. Subsequent implementation and modification of these requirements have been duly submitted to OMB for approval.[122] The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. Application for approval of these modifications has been made to OMB as prescribed by that Act.

VI. ORDERING CLAUSE

73. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205, 215, 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-205, 215, 218, 219 and 220, and Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291, that the ARMIS Quarterly Service Quality Report (FCC Report 43-05), ARMIS Semiannual Service Quality Report (FCC Report 43-06), and ARMIS Annual Infrastructure Report (FCC Report 43-07) ARE REVISED as set forth above and in the attached Appendix A, effective for filings due on March 31, 1994, according to the terms set forth in paragraph six herein.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau

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[118] "Total Access Lines" are reported elsewhere in ARMIS, in the 43-01 Quarterly Report and the 43-04 Access Report. These reports are of *billable* access lines, however.

[119] ARINC Comments at 2.

[120] TCA Comments at 15-16.

[121] *Service Quality Order*, 6 FCC Rcd at 2995, para. 51.

[122] The Office of Management and Budget has approved the current collection of this information requirement. The OMB control number for this collection of information requirement is 3060-0395.

ATTACHMENT

This document provides the instructions for FCC Report 43-05, the ARMIS Service Quality Report, which was adopted by the Commission in CC Docket No. 87-313. The instructions consist of the following sections, which are attached.

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-05, the ARMIS Service Quality Report, to the Commission.

B. General Information

1. FCC Report 43-05 was adopted by the Commission in the LEC Price Cap Order, Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6827-30 (1990). This report is prescribed for every local exchange carrier for which price cap regulation is mandatory and for every local exchange carrier that elects to be covered by the price cap rules.

2. Affected carriers shall file by March 31, June 30, September 30, and December 31 of each year the report for the previous calendar quarter.

3. The report shall be filed on a study area (Jurisdiction) basis.

4. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-05, which identifies the filing as the ARMIS Quarterly Service Quality Report. The period identifies the year and quarter covered by the data. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is confidential, Public or unrestricted; the Commission has determined that no confidential treatment shall be granted for Report 43-05 filings. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a quarter's data. Higher numbers (2, 3, etc.) must be used when filing successive revisions to correct that quarter's submission. All corrective submissions must be filed in both paper and diskette with the Accounting and Audits Division, the Industry Analysis Division and International Transcription Services (ITS).

5. All correspondence and pleadings shall identify the proceeding as CC Docket No. 87-313.

C. Where to file

1. Carriers submitting FCC Report 43-05 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, ITS, at 2100 M Street, N.W., Suite

140, Washington, D.C. 20037 or Room 246 at FCC Headquarters, 1919 M Street., N.W., Washington, D.C. 20036.

NUMBER OF COPIES

	Transmittal Letter	Paper Report	Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division Room 812 2000 L Street, N.W. Washington D.C., 20554	1	1	1
FCC Common Carrier Bureau Industry Analysis Division Room 538 1919 M Street, N.W. Washington, D.C. 20554	1	1	1
International Transcription Services Inc., (ITS) Room 246 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

D. Footnotes

1. If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances, the filing carrier must include footnote text to explain the specific circumstances fully. Certain items require accompanying footnotes and those items are specified in the appropriate section of the instructions for filing the 43-05. Such footnotes are mandatory and must be entered in the Footnote Text Records and Footnote Table.

   EXAMPLE:

   Table 1, row 110 requires the reporting carrier to specify whether it is reporting number of orders or number of circuits in that row.

2. Footnotes must contain full explanations.

EXAMPLE:

Do not say, "Data are compiled using a more inclusive process than in previous filings."
Do say, "Data are compiled using a process that includes xxx, which was not included in previous filings. The impact of including xxx in this row inflates this number by x% over the previous reporting period."

3. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must fully explain any deviations from those procedures.

EXAMPLE:

Do not say, "This value was not calculated pursuant to the instructions."
Do say, "This value was calculated using the xxx method rather than the method described in the instructions because...."

4. Fully explain means the footnote will provide enough information for the data user to understand the circumstances.

EXAMPLES:

a. Do not say, "Corrected Data."
Do say, "$xxxx is changed to $xxxx because ...."

b. Do not say, "Waiver" or "Waiver Granted."
Do say, "Waiver of Part xx.xxx was granted in CC Docket No. xx-xxx, X FCC Rcd, xxxx (1992) to allow AnyCompany to .... because ...."

5. Do not include explanatory footnotes in the transmittal letter. The footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the Automated Report Specifications.

E. Errata

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-05. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission and why those corrections were made.

2. Those references must be included in the Erratum Records and the Erratum Table as specified in the Automated Report Specifications.

F. Certification

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-05 by including a certification statement, signed by a corporate officer, as the last page of the paper report.

2. The text of the certification statement is included on page 20 of 20 in the attached report definition

G. Waivers

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-05, it must file a petition for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single petition. The petition must demonstrate good cause for reporting a different or lower level of detail, must establish the duration of the waiver request, and must indicate how these deficiencies will be corrected.

2. Omission of individual data items or entries, without request for waiver, is unacceptable.

H. Public Information

1. The paper reports filed as Report 43-05 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the paper or automated reports filed as Report 43-05 may be obtained from the FCC's contractor for public records duplication, ITS, at (202) 857-3824.

For further information regarding these procedures, contact:

Barbara Van Hagen
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Approved by OMB[1]
3060-0395
Expires 05/31/9X
Estimated Burden Hours Per Response: 833 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-05, the ARMIS Service Quality Report which must be provided quarterly by study area. It contains the following:

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All percentage amounts must be entered in percent and rounded to 2 decimal places. All minutes, days and hours must be rounded to the nearest tenth. Number of Access Lines must be rounded to the nearest thousand, with the exception of Table IV-A, which must be entered in whole numbers. All number of orders, circuits, trouble reports, no trouble found, trunk groups, switches, complaints, and incidents must be entered in whole numbers. All other amounts must be rounded to the nearest thousand.

All fields must be populated. If a data measure equals the quantity zero, enter zero in that field. This is the only proper use of zero in this report. If a filing carrier has a waiver applicable to a certain field, treat the data in that field as "Irretrievable" and footnote the reason for that entry (including a cite to the waiver, and a note as to its duration). Enter N/A in only those fields which are designated as such on the hard copy sample or in the instructions. Do not enter N/A in any other field. See Data Entry Convention, No. 5, in the Automated Report Specifications

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[1] This revision has been submitted to OMB for review.

Do not include explanatory footnotes in the transmittal letter; such notes must be included in the Footnotes section of the filing. REMEMBER: Footnotes are mandatory in Table I, row 110 and in Table IV-A, column (t) for those rows in which the code 15 is entered. Footnotes are also mandatory whenever an "Irretrievable" designation is entered in any table.

NOTICE: The ARMIS Service Quality Report collects data designed to capture trends in service quality under price cap regulation and improves and standardizes existing reporting requirements for this purpose. The ARMIS Service Quality Report specifies information requirements in a consistent format and is essential to the FCC to monitor service quality under price cap regulation. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 833 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FCC Report 43-05 Approved by OMB
ARMIS QUARTERLY SERVICE QUALITY REPORT 3060-0395
Expires 05/31/9X

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - INSTALLATION AND REPAIR INTERVALS
(Interexchange Access)

Row	Classification	Column		
		Switched Access	Special Access	
			High Speed Special Access	All Special Access
		(a)	(b)	(c)
	INSTALLATION INTERVALS:			
0110	Total Number of Orders or Circuits		N/A	
0112	% Commitments Met		N/A	
0114	Average Interval (in days)		N/A	
	REPAIR INTERVALS:			
0120	Total Trouble Reports			
0121	Average Interval (in hours)			

FCC Report 43-05
ARMIS QUARTERLY SERVICE QUALITY REPORT

Approved by OMB
3060-0395
Expires 05/31/9X

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE II

TABLE II - INSTALLATION AND REPAIR INTERVALS
(Local Service)

Row	Classification	Column						
		Residence			Business			
		MSA	Non-MSA	Total	MSA	Non-MSA	Total	Total
		(d)	(e)	(f)	(g)	(h)	(i)	(j)
	INSTALLATION INTERVALS:							
0130	Installation Orders							
0132	% Commitments Met							
0134	Average Interval							
	REPAIR INTERVALS:							
0140	Total Access Lines							
	INITIAL TROUBLE REPORTS:							
0141	Init Trouble Reports							
0144	Out-of-Svc Trbl Rpts							
0145	Out-of Svc Rpr Intvl							
0146	All Other Trbl Rpts							
0147	All Other Rpr Intvl							
	REPEAT TROUBLE REPORTS:							
0142	Rep Trouble Reports							
0148	Out-of-Svc Trbl Rpts							
0149	Out-of Svc Rpr Intvl							
0150	All Other Trbl Rpts							
0151	All Other Rpr Intvl							
	NO TROUBLE FOUND:							
0143	Tot No Trouble Found							

FCC Report 43-05
ARMIS QUARTERLY SERVICE QUALITY REPORT

Approved by OMB
3060-0395
Expires 05/31/9X

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE III

TABLE III - TRUNK BLOCKAGE

Row	Classification	Column		
		Month 1	Month 2	Month 3
		(k)	(l)	(m)
0180	Total Trunk Groups			
0181	Groups Measured			
0185	FGD Groups Exceed Thold 3Mos			
0186	Other Groups Exceed Thold 3Mo			
0187	FGD Groups Exceed Thold 1 Mo			
0188	Groups Exceed Threshhold 1 Mo			
0189	FGD Groups Exceed DBO 3 Mos			
0190	Other Groups Exceed DBO 3 Mos			

FCC Report 43-05
ARMIS QUARTERLY SERVICE QUALITY REPORT

Approved by OMB
3060-0395
Expires 05/31/9X
xxxxxxxxxxx VERSION
SUBMISSION x
TABLE IV

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE IV - TOTAL SWITCH DOWNTIME

Row	Classification	Column					
		Total Number Switches (n)	No Switch Downtime (o)	Total Switch Downtime (p)	Incidents Under 2 (q)	Number Unscheduled (r)	Percent Unscheduled (s)
0200	MSA						
0201	Non-MSA						
0210	Switches Under 1000 Lines						
0211	Switches 1000-4999 Lines						
0212	Switches 5000-9999 Lines						
0213	Switches 10000-19999 Lines						
0214	Switches Over 20,000 Lines						

FCC Report 43-05 Approved by OMB
ARMIS QUARTERLY SERVICE QUALITY REPORT 3060-0395
Expires 05/31/9X

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE IV.A
COSA: xxxx

TABLE IV-A - OCCURRENCES OF TWO MINUTES OR MORE DURATION DOWNTIME

Row	Cause	CLLI Code	Access Lines	MSA	Duration	Date	Time
	(t)	(u)	(v)	(w)	(x)	(y)	(z)
0220							
0500							

FCC Report 43-05
ARMIS QUARTERLY SERVICE QUALITY REPORT

Approved by OMB
3060-0395
Expires 05/31/9X

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE V

TABLE V - SERVICE QUALITY COMPLAINTS

Row	Classification	Column		
		Total	MSA	Non-MSA
		(aa)	(bb)	(cc)
0320	No Business Access Lines			
0321	Fed Complaints Bus Users			
0322	State Complaints Bus Users			
0330	No Residential Access Line			
0331	Fed Complaints Res Users			
0332	State Complaints Res Users			

Approved by OMB[1]
3060-0395
Expires 5/31/199X

Quarterly Service Quality Report

General Instructions

For the purposes of this report, the terms switch, switching entity and entity are used interchangeably. The terms access lines, lines and lines in service are also used interchangeably. Switch counts are updated quarterly and access line counts are updated annually, representing year-end counts.

Row Instructions

Table I

Row 0110 - Total Number of Orders or Circuits - Enter the total number of installation orders or circuits from Interexchange carriers/customers for the current reporting period on this row. This amount excludes installation orders not completed by the commitment date because the customer was not prepared to receive service on that date. Enter in whole numbers. The reporting carrier must include a footnote to indicate whether it is counting orders or circuits. This footnote is mandatory and must be entered in the Footnote Table.

Row 0112 - % Commitments Met - Enter the percentage of commitments met during the current reporting period on this row. This amount is calculated by dividing the number of installation orders or circuits from Interexchange carriers/customers completed by commitment date by the total number of installation orders or circuits (row 0110). NOTE: The commitment dates for various kinds of installations are published by the LECs and must be kept on file with the Commission. Commitment dates may be extended at the customer's request. Enter in percent, rounded to 2 decimal places.

Row 0114 - Average Interval - Enter the average interval, expressed in business days, between the day the service or order for Interexchange carriers/customers was placed and the day the service was completed, for orders placed during the current reporting period. This amount excludes orders having commitment dates set by customers. Round to the nearest tenth.

Row 0120 - Total Trouble Reports - Enter the total number of circuit-specific trouble reports referred to the LEC by interexchange carriers/customers during the current reporting period. Enter in whole numbers.

Row 0121 - Average Interval - Enter the average interval, in hours to the nearest tenth based on a stopped clock, from the time of the reporting carrier's receipt of the trouble report to the time of acceptance by the complaining interexchange carrier/customer. This interval is defined as "Interval measured in clock hours, excluding only time when maintenance is delayed due to circumstances beyond the LEC's control. Typical reasons for delay include, but are not limited

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[1] This revision has been submitted to OMB for review.

to, premise access when a problem is isolated to the location or to absence of customer support to test facilities".

Table II

Row 0130 - Installation Orders - Enter the total number of installation orders for local service customers for the current reporting period. This amount excludes installation orders not completed by the commitment date because the customer was not prepared to receive service on that date. Enter in whole numbers.

Row 0132 - % Commitments Met - Enter the percentage of commitments met during the current reporting period on this row. This amount is calculated by dividing the number of installation orders completed by commitment date by the total number of installation orders (row 0130). Enter in percent, rounded to 2 decimal places.

Row 0134 - Average Interval - Enter the average interval, expressed in business days, between the date the order was placed and the day the service or order was completed, for all orders placed during the current reporting period. This amount excludes all orders having commitment dates set by customers. Round to the nearest tenth.

Row 0140 - Total Access Lines - Access lines include all classifications of local exchange telephone service including, but not limited to, individual lines, party line access, PBX access, Centrex access, Coin access, Foreign Exchange access and WATS access. Access lines, as defined herein, is a more inclusive term than billable access lines as defined in ARMIS 43-01 and 43-04 reports. See row instructions for rows 2090 through 2140 of the ARMIS 43-01 Report and row 9010 of the ARMIS 43-04 Report for the definition of billable access lines. Round to the nearest thousand.

Initial Trouble Reports - These are complaints concerning service quality made by customers or end users to LECs. Such complaints concern problems that have not been reported to the LEC within the previous thirty day period.

Row 0141 - Total Initial Trouble Reports - Enter the number of total initial trouble reports. This amount equals the total of rows 0144 and 0146. Enter in whole numbers.

Row 0144 - Out-of-Service Initial Trouble Reports - Enter the number of initial out-of-service trouble reports received by the reporting carrier during the current reporting period. Out-of-service means that the trouble reported causes the customer to be totally without telephone service. Enter in whole numbers.

Row 0145 - Out-of-Service Average Repair Interval - Enter the average interval, expressed in hours to the nearest tenth measured on a running clock, between the time a trouble report entered in row 0144 is received by the LEC, and the time the trouble report is cleared. This interval is defined as "the total time from receipt of the customer trouble to clearing the trouble. Clear represents

the final disposition of the report, either repairing the problem or closing the report to another category, such as a no trouble found category."

Row 0146 - All Other Initial Trouble Reports - Enter the number of all other initial trouble reports (complaints concerning static, interrupted calls, etc.) received by the reporting carrier during the current reporting period. Enter in whole numbers.

Row 0147 - All Other Average Repair Interval - Enter the average interval, expressed in hours measured on a running clock, between the time a trouble report entered in row 0146 is received by the LEC, and the time the trouble report is cleared. Round to the nearest tenth.

Repeat Trouble Reports - These are complaints concerning service quality problems that recur, or remain unresolved, within thirty days of the initial trouble report.

Row 0142 - Total Repeat Trouble Reports - Enter the number of total repeat trouble reports. This amount equals the total of rows 148 and 150. Enter in whole numbers.

Row 0148 - Out-of-Service Repeat Trouble Reports - Enter the number of out-of-service repeat trouble reports received by the reporting carrier during the current reporting period. Enter in whole numbers.

Row 0149 - Out-of-Service Average Repair Interval - Enter the average interval, expressed in hours measured on a running clock, between the time a trouble report entered in row 0148 is received by the LEC, and the time the trouble report is cleared. Round to the nearest tenth.

Row 0150 - Other Repeat Trouble Reports - Enter the number of other repeat trouble reports received by the reporting carrier during the current reporting period. Enter in whole numbers.

Row 0151 - Other Average Repair interval - Enter the average interval, expressed in hours measured on a running clock, between the time a trouble report entered in row 0150 is received by the LEC and the time the trouble report is cleared. Round to the nearest tenth.

Row 0143 - No Trouble Found - No trouble found refers to a trouble report investigation which finds no discernible problem. Enter the number of investigations which found no problem during the current reporting period. Enter in whole numbers.

Table III

Row 0180 - Total Trunk Groups - Enter the total number of common trunk groups for which the reporting carrier is responsible. Common trunk groups are trunk groups between the LEC end office and the LEC access tandem that carry Feature Group B, C and D access traffic. IntraLATA traffic may also be carried on these groups. Enter in whole numbers.

Row 0181 - Groups Measured - Enter the number of common trunk groups measured during the current reporting period in this row. Enter in whole numbers.

Row 0185 - Feature Group D Groups Exceeding Servicing Threshold for Three Months - Enter the number of Feature Group D common trunk groups which have exceeded a servicing threshold of 2% for three consecutive months. Carriers using other thresholds must footnote them. Enter in whole numbers.

Row 0186 - Other Groups Exceeding Servicing Threshold for Three Months - Enter the number of all other common trunk groups which have exceeded a servicing threshold of 3% for three consecutive months. Carriers using other thresholds must footnote them. Enter in whole numbers.

Row 0187 - FGD Groups Exceeding Servicing Threshold for One Month - Enter the number of direct access trunk groups which have exceeded the interstate access tariff measured blocking threshold of 2% for one month. Enter in whole numbers.

Row 0188 - Other Groups Exceeding Servicing Threshold for One Month - Enter the number of all other trunk groups which have exceeded the interstate access tariff measured blocking threshold of 3% for one month. Enter in whole numbers.

Row 0189 - Feature Group D Groups Exceeding Design Blocking Objectives for Three Consecutive Months - Enter the number of Feature Group D common trunk groups, or mixed usage trunks that include any Feature Group D, which have exceeded an equipment design blocking objective of 0.5% for three or more consecutive months. Enter in whole numbers.

Row 0190 - Other Groups Exceeding Design Blocking Objectives for Three Consecutive Months - Enter the number of all other common trunk groups which have exceeded an equipment design blocking objective of 1.0% for three consecutive months. Carriers using a different DBO must footnote it. Enter in whole numbers.

Table IV

Row 0200 - MSA - This row represents all MSAs served within the study area. MSAs, or Metropolitan Statistical Areas, are designated by the Office of Management and Budget in a list released following each decennial census. An MSA includes at least one city with a minimum population of 50,000, or a Census Bureau defined urbanized area of at least 50,000 population located in one or more counties that qualify and whose population is at least 100,000. See 55 Fed. Reg. 12154 (March 30, 1990). Use the rounding conventions specified in the column instructions when entering these data.

Row 0201 - Non-MSA - This row represents all areas in the study area which lie outside of any MSA. Use the rounding conventions specified in the column instructions when entering these data.

Row 0210 - Switches Under 1,000 Lines - Enter the number of switches, and associated data, serving fewer than 1,000 access lines. Use the rounding conventions specified in the column instructions when entering these data.

Row 0211 - Switches with 1,000 to 4,999 Lines - Enter the number of switches, and associated data, serving 1,000 to 4,999 access lines. Use the rounding conventions specified in the column instructions when entering these data.

Row 0212 - Switches with 5,000 to 9,999 Lines - Enter the number of switches, and associated data, serving 5,000 to 9,999 access lines. Use the rounding conventions specified in the column instructions when entering these data.

Row 0213 - Switches with 10,000 to 19,999 Lines - Enter the number of switches, and associated data, serving 10,000 to 19,999 access lines. Use the rounding conventions specified in the column instructions when entering these data.

Row 0214 - Switches with 20,000 or more Lines - Enter the number of switches, and associated data, serving 20,000 or more access lines. Use the rounding conventions specified in the column instructions when entering these data.

NOTE: The sum of rows 0200 and 0201 equals the sum of rows 0210 through 0214.

Table IV-A

Rows 220 through 500 - Each of these rows, with the exception of rows 320 through 340 which are in Table V, is provided for entry of one occurrence of switch downtime of two or more minutes in duration. For each occurrence use one row, entering the appropriate data in the columns provided. Include only those rows with data to be reported, but complete every item in those rows. Use the rounding conventions specified in the column instructions when entering these data.

Table V

Service Quality Complaints - Service quality complaints are complaints pertaining to service quality filed with state or federal regulatory authorities. This term does not include complaints relating to billing, operator service providers, 900 or 976 services.

Row 0320 - Number of Business Access Lines - Enter the total number of business access lines as of December 31 of the previous calendar year (in thousands) in the study area on this row.

Row 0321 - Federal Complaints from Business Users - Federal complaints are complaints filed with this Commission. Enter the number of federal complaints filed by business users on this row. Enter in whole numbers.

Row 0322 - State Complaints from Business Users - State complaints are complaints filed with state regulatory agencies. Enter the number of state complaints filed by business users on this row. Enter in whole numbers.

Row 0330 - Number of Residential Access Lines - Enter the total number of residential access lines as of December 1 of the previous calendar year (in thousands) in the study area on this row.

Row 0331 - Federal Complaints from Residential Users - Enter the number of federal complaints filed by residential users on this row. Enter in whole numbers.

Row 0332 - State Complaints from Residential Users - Enter the number of state complaints filed by residential users on this row. Enter in whole numbers.

Service Quality Report

Column Descriptions

Table I

Interexchange - This table represents interexchange carrier customers placing installation orders or reporting trouble to the local exchange carrier during the current reporting period.

Column (a) - Switched Access - Circuit from the local exchange carrier (LEC) office to the interexchange carrier/customer Point of Presence (POP) for Feature Group B, C or D interstate service.

Special Access - Circuit from the LEC facilities to the interexchange carrier POP or customer premises for voice grade service, WATS/800, metallic and telegraph services, audio or video program services, wideband services, DDS, high capacity, DS1, DS3, and switched Feature Group A services.

Column (b) - High Speed Special Access - Circuit from the LEC facilities to the interexchange carrier POP or customer premises for DS1, DS2, DS3 and other similar digital services.

Column (c) - All Special Access - Enter all special access data, including those entered in column (b), in this column .

Table II

Residence - Columns (d), (e) and (f) represent residential customers placing installation orders or reporting trouble to the local exchange carrier during the current reporting period.

Column (d) - MSA - MSAs, or Metropolitan Statistical Areas, are designated by the Office of Management and Budget in a list following each decennial census. An MSA includes at least one city with a minimum population of 50,000 and its surrounding area, or a Census Bureau defined urbanized area of at least 50,000 population located in one or more counties that qualify and whose population is at least 100,000. See 55 Fed. Reg. 12154 (March 30, 1990). This amount represents all residential customers located within MSAs in the study area served by the reporting carrier.

Column (e) - Non-MSA - This amount represents all residential customers located outside of all MSAs in the study area served by the reporting carrier.

Column (f) - Total - This amount represents all residential customers in the study area served by the reporting carrier (the sum of columns (d) and (e)).

Business - Columns (g), (h) and (i) represent local service business customers placing installation orders or reporting trouble to the local exchange carrier during the current reporting period.

Column (g) - MSA - See column (d) for the definition of MSA. This amount represents all local service business customers located within MSAs in the study area served by the reporting carrier.

Column (h) - Non-MSA - This amount represents all local service business customers located outside of all MSAs in the study area served by the reporting carrier.

Column (i) - Total - This amount represents all business customers in the study area served by the reporting carrier (the sum of columns (g) and (h)).

Column (j) - Total - Enter the sum of columns (f) and (i) in this column.

Table III

Column (k) - Month 1 - The first month of the current reporting quarter.

Column (l) - Month 2 - The second month of the current reporting quarter.

Column (m) - Month 3 - The third months of the current reporting quarter.

Table IV

Switch Downtime - Switch downtime occurs when call processing capability for an end office is lost. Multiple serial outages at a single switch are to be counted as multiple individual outages if service is restored, even momentarily, between them.

Column (n) - Total Number of Switches - Switching entities (switches) are assemblies of equipment designed to establish connections between lines and trunks. Switching entities include local, class 5 switching machines and any associated remotes; e.g., a host end office and its three associated remotes will be reported as four switching entities. Switching entities designed exclusively for access tandem, class 4, or operator services are not reported here. There may be more than one switching entity per central office or wire center. Enter in whole numbers.

Column (o) - Number of Switches Having Downtime - This column represents the number of switches that experienced downtime during the current reporting period. Enter in whole numbers.

Column (p) - Total Switch Downtime - Switch downtime occurs when call processing capability for an end office is lost. Report all downtime, in cumulative minutes to the nearest tenth, in this column.

Column (q) - Incidents Under Two Minutes - This amount represents the number of incidents of downtime under two minutes in duration. Enter in whole numbers.

Column (r) - Number Unscheduled - This amount represents the number of incidents of switch downtime under two minutes in duration that were not scheduled for routine maintenance or network upgrades. Scheduled downtime refers to those times when a switch is taken down at a predetermined time so that it may be

upgraded or serviced. Such downtimes usually occur during non-busy hours. All other downtime incidents are unscheduled. Enter in whole numbers.

Column (s) - Percent Unscheduled - This amount represents the percent of downtime incidents under two minutes that are not scheduled for routine maintenance or network upgrades. (The ratio of column (r) to column (q), in percent). Enter in percent, rounded to 2 decimal places.

Table IV-A

Column (t) - Cause - This column is two spaces wide. Each condition that causes downtime is entered here as one of the following two-digit codes:

01 - scheduled - includes outages, restarts, phases, etc. resulting from scheduled or planned manual initializations. This includes such activities as parameter loads, software/firmware changes, and other OA&M activities.

02 - procedural errors - telco - installation or maintenance related

03 - procedural errors - telco - non installation or maintenance related (deviation from established procedures, or human error within established procedures; includes failure to respond)

04 - procedural errors - system vendors - includes errors in documentation/instruction

05 - procedural errors - other vendors - e.g., contractor, independent installation vendor

06 - software design - faulty or ineffective design, including faulty patches or software overrides provided by vendor

07 - hardware design - design deficiency or error. Does not include Product Change Notice (PCN) inappropriately delayed by vendor (=procedural error vendor) or telco (=procedural error telco), or PCN waived by telco (=procedural error telco)

08 - hardware failure - random hardware failure not related to design but due to inherent unreliability of system components

09 - acts of God - weather, natural disaster (including lightning, but not if lightning's effect due to bonding or grounding violations; then = procedural error vendor or telco)

10 - traffic overload - traffic load exceeds engineered capacity of system due to unforseen external condition; not if due to system trouble, inadequate engineering, inadequate network management, system design deficiency

11 - environmental - contamination, leaks, temperature, etc.

12 - external power failure - use of this classification is rare because of existence of battery and other backup systems; does not include failures of converters, inverters internal to telco

13 - massive line outage - cable cut, other

14 - remote - loss of facilities between host and remote (if due to activities internal to host or remote; if external, assign other cause as appropriate -- e.g., cable dig-up = procedural telco or procedural other vendor)

15 - other/unknown - must be footnoted; if unknown, so state in footnote.

Thus a carrier noting an unscheduled outage due to an external power failure would report simply "12". Footnotes should be used to give further details when necessary. If a code other than the standard 11-digit code is used, it must be footnoted.

Column (u) - CLLI Code - Enter the eleven-digit CLLI (Common Language Location Identifier) code which identifies the switch that experienced downtime of two minutes or more in duration. Enter data for only one switch's outage incident on a row.

Column (v) - Access Lines - The number of working network access lines served by the switch. Enter in whole numbers.

Column (w) - MSA - See Table II, column (d) for the definition of MSA. Enter Y if the incident involved a switch that lies within an MSA in the study area served. Enter N if the incident involved a switch outside of all MSAs in the study area served.

Column (x) - Duration - Enter the duration of the outage in minutes, to the nearest tenth, in this column.

Column (y) - Date - Enter the date of the outage in this column using the format mmddyy.

Column (z) - Time - Enter the time of the outage in this column using format hhmm for a 24 hour clock (e.g., 11:00 p.m. = 2300; noontime = 1200; 6:30 p.m. = 1830, etc.)

Table V

Column (aa) - Total - Enter the total number of access lines in the study area for rows 0520 and 0530 in this column; enter the total number of complaints in the study area for rows 0521, 0522, 0531 and 0532 in this column. The amount in this column equals the sum of columns (ee) and (ff).

Column (bb) - MSA - See Table II, column (d) for the definition of MSA. Enter the appropriate MSA amounts for rows 0520, 0521, 0522, 0530, 0531 and 0532 in this column.

Column (cc) - Non-MSA - Enter the appropriate non-MSA amounts for rows 0520, 0521, 0522, 0530, 0531 and 0532 in this column.

CERTIFICATION

I certify that I am an officer of _____: that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from

_____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

This document provides the instructions for FCC Report 43-06, the ARMIS Semi-Annual Service Quality Report, which was adopted in CC Docket No. 87-313. The instructions consist of the following sections, which are attached.

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-06, the ARMIS Semi-Annual Service Quality Report, to the Commission.

B. General Information

1. FCC Report 43-06 was adopted by the Commission in the LEC Price Cap Order, Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6827-30 (1990). This report is prescribed for every local exchange carrier for which price cap regulation is mandatory.

2. Affected carriers shall file by March 31 and September 30 of each year, the report for the previous calendar half.

3. The report shall be filed on a study area (Jurisdiction) basis.

4. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-06, which identifies the filing as the ARMIS SemiAnnual Service Quality Report. The period identifies the year and quarter covered by the data. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is confidential, Public or unrestricted. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a quarter's data. Higher numbers (2, 3, etc.) must be used when filing successive revisions to correct that quarter's submission. All corrective submissions must be filed in both paper and diskette with the Accounting and Audits Division, the Industry Analysis Division and International Transcription Services (ITS).

5. All correspondence and pleadings shall identify the proceeding as CC Docket No. 87-313.

C. Where to file

1. Carriers submitting FCC Report 43-06 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, ITS, at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 or Room 246 at FCC Headquarters, 1919 M Street., N.W., Washington, D.C. 20036.

NUMBER OF COPIES

	Transmittal Letter	Paper Report	Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division Room 812 2000 L Street, N.W. Washington D.C., 20554	1	1	1
FCC Common Carrier Bureau Industry Analysis Division Room 538 1919 M Street, N.W. Washington, D.C. 20554	1	1	1
International Transcription Services Inc., (ITS) Room 246 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

D. Footnotes

1. If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances, the filing carrier must include footnote text to explain the specific circumstances fully.

   EXAMPLE:

   If there were a dramatic decrease in the number of offices tested for dial tone speed in row 210, a footnote to explain the change would be necessary.

2. Footnotes must contain full explanations.

   EXAMPLE:

   Do not say, "Data are compiled using a more inclusive process than in previous filings."
   Do say, "Data are compiled using a process that includes xxx, which was not included in previous filings. The impact of including xxx

in this row inflates this number by x% over the previous reporting period."

3. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must fully explain any deviations from those procedures.

EXAMPLE:

Do not say, "This value was not calculated pursuant to the instructions."
Do say, "This value was calculated using the xxx method rather than the method described in the instructions because...."

4. Fully explain means the footnote will provide enough information for the data user to understand the circumstances.

EXAMPLES:

a. Do not say, "Corrected Data."
Do say, "$xxxx is changed to $xxxx because ...."

b. Do not say, "Waiver" or "Waiver Granted."
Do say, "Waiver of Part xx.xxx was granted in CC Docket No. xx-xxx, X FCC Rcd, xxxx (1992) to allow AnyCompany to .... because ...."

5. Do not include explanatory footnotes in the transmittal letter. The footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the Automated Report Specifications.

E. Errata

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-06. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission and why those corrections were made.

2. Those reference must be included in the Erratum Records and the Erratum Table as specified in the Automated Report Specifications.

F. Certification

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-06 by including a certification statement, signed by a corporate officer, as the last page of the paper report.

2. The text of the certification statement is included on page 7 of 7 in the attached report definition.

G. Waivers

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-06, it must file a petition for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single petition. The petition must demonstrate good cause for reporting a different or lower level of detail, must establish the duration of the waiver requested, and must indicate how these deficiencies will be corrected.

2. Omission of individual data items or entries, without request for waiver, is unacceptable.

H. Public Information

1. The paper reports filed as Report 43-06 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the paper or automated reports filed as Report 43-06 may be obtained from the FCC's contractor for public records duplication, ITS, at (202) 857-3824.

For further information regarding these procedures, contact:

Barbara Van Hagen
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

SUMMARY

This document provides the Report Definition for FCC Report 43-06, the ARMIS Semi-Annual Service Quality Report which must be provided semi-annually by study area. It contains the following:

	PAGE
Table I - Summary Customer Satisfaction Survey	2
Table II - Dial Tone Response and Transmission Quality	3
Table I - Row Instructions	4
Table II - Row Instructions	4
Table I - Column Instructions	6
Table II - Column Instructions	6
Certification	7

All percentage amounts must be entered in percent and rounded to 2 decimal places.

All monetary figures must be rounded to the nearest thousand dollars. All number of offices and customers must be entered in whole numbers.

All fields must be populated. If a data measure equals the quantity zero, enter zero in that field. This is the only proper use of zero in this report. If a filing carrier has a waiver applicable to a certain field, it must treat the data for that field as "Irretrievable" and footnote the reason for that entry (including a cite to the waiver, and a note as to its duration). Enter N/A in only those fields which are designated as such on the hard copy sample or in the instructions. Do not enter N/A in any other field. See Data Entry Convention, No. 5, in the Automated Report Specifications.

Do not include explanatory footnotes in the transmittal letter; such notes must be included in the Footnotes section of the filing. REMEMBER: Footnotes are mandatory for all "Irretrievable" entries.

NOTICE: The ARMIS Semi-Annual Service Quality Report collects data designed to capture trends in service quality under price cap regulation and improves and standardizes existing reporting requirements for this purpose. The ARMIS Semi-Annual Service Quality Report specifies information requirements in a consistent format and is essential to the FCC to monitor service quality under price cap regulation.

This report is prescribed for every mandatory price cap local exchange carrier and is not subject to the clearance procedures of 44 USC 3507 pursuant to the less than ten rule. Send comments regarding any aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 30554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C., 20503.

FCC Report 43-06

ARMIS SEMIANNUAL SERVICE QUALITY REPORT

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION

STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x

PERIOD: From mmmm yyyy To mmmm yyyy TABLE I

COSA: xxxx

TABLE I - SUMMARY CUSTOMER SATISFACTION SURVEY

Row	Classification	Columns					
		Residential		Small Business		Large Business	
		Number Surveyed (b)	Percent Dissatisfd (c)	Number Surveyed (d)	Percent Dissatisfid (e)	Number Surveyed (f)	Percent Dissatisfid (g)
0020	Overall						
0040	Installations						
0060	Repairs						
0080	Business Office						

FCC Report 43-06
ARMIS SEMIANNUAL SERVICE QUALITY REPORT

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmmm yyyy To mmmm yyyy TABLE II
COSA: xxxx

TABLE II - DIAL TONE RESPONSE AND TRANSMISSION QUALITY

ROW		COLUMN
		TOTAL STUDY AREA
		(a)
PERCENT OF OFFICES PERFORMING AT OR ABOVE DIAL TONE SPEED OBJECTIVE LEVEL:		
0200	Percent of Offices at or Above Objective	
0210	Number of Offices Measured	
PERCENT OF OFFICES MEETING ALL TRANSMISSION OBJECTIVES:		
0240	Percent of Offices Meeting Loss Objectives	
0241	Percent Offices Meeting C-Message Objectives	
0242	Percent of Offices Meeting Balance Objectives	
0243	Percent Offices Meeting Gain Slope Objectives	
0244	Percent of Offices Meeting C-Notch Objectives	
PERCENT OF TRUNKS MEETING ALL TRANSMISSION OBJECTIVES:		
0250	Percent of Trunks Meeting Loss Objectives	
0251	Percent of Trunks Meeting Noise Objectives	
0252	Percent of Trunks Meeting Balance Objectives	
0253	Percent Trunks Meeting Gain Slope Objectives	
0254	Percent of Trunks Meeting C-Notch Objectives	

Semi-Annual Service Quality Report

Row Instructions

Table I

Table I is a summary report of the results of the responding carriers' customer satisfaction surveys consisting of generic categories into which the disaggregated categories used by the carriers may be summarized. We chose generic categories in order to maintain the integrity of the individual customer satisfaction surveys, designed by each of the carriers, to suit each carrier's unique circumstances. Use the rounding conventions specified in the column instructions when entering these data.

Row 0020 - Overall - In this row enter the number of customers surveyed and the percent dissatisfied with the overall performance of the reporting carrier.

Row 0040 - Installations - In this row enter the number of customers surveyed and the percent dissatisfied with the reporting carrier's installation services and procedures.

Row 0060 - Repairs - In this row enter the number of customers surveyed and the percent dissatisfied with the reporting carrier's repair services and procedures.

Row 0080 - Business Office - In this row enter the number of customers surveyed and the percent dissatisfied with the reporting carrier's business office services and procedures.

Table II

Row 0200 through 0230 measure the ability of the switching equipment to provide dial tone for an originating call attempt within a specified period of time. The results of the test measurement are reflected in these rows as the percentage of dial tone offices which give dial tone within three seconds of lifting the telephone instrument. The measured performance is derived from call attempt samples taken during the central office busy hours. An office is considered to pass the performance test if a specified number of test calls receive dial tone within the three second criterion.

Row 0200 - Percent Sample at Objective Level - Enter the number of offices passing the measurement standard divided by the number of offices measured. Enter in percent rounded to 2 decimal places.

0210 - Number of Offices Measure - Enter the number of offices tested for dial tone speed. Enter in whole numbers.

Row 0240 - Percent of Offices Meeting Loss Objectives - Enter the percentage of offices passing tests for signal attenuation or loss. Enter in percent rounded to 2 decimal places.

Row 0241 - Percent of Offices Meeting C-Message Objectives - Enter the percentage of offices passing tests for noise over the audible spectrum weighted in a manner consistent with human hearing. Enter in percent rounded to 2 decimal places.

Row 0242 - Percent of Offices Meeting Balance Objectives - Enter the percentage of offices passing tests for balance which determines the amount of echo heard by the subscriber. Enter in percent rounded to 2 decimal places.

Row 0243 - Percent of Offices Passing Gain Slope Objectives - Enter the percentage of offices passing tests for gain slope which is a measure of distortion. Enter in percent rounded to 2 decimal places.

Row 0244 - Percent of Offices Meeting C-Notch Objectives - Enter the percentage of offices passing tests for noise in specified portions of the signal bandwidth. Enter in percent rounded to 2 decimal places.

Row 0250 - Percent of Trunks Meeting Loss Objectives - Enter the percentage of trunks which must pass the loss test and the technical requirement for an office to pass (maintenance limit). Enter in percent rounded to 2 decimal places.

Row 0251 - Percent of Trunks Meeting Noise Objectives - Enter the percentage of trunks which must pass the noise test and the technical requirement for an office to pass (maintenance limit). Enter in percent rounded to 2 decimal places.

Row 0252 - Percent of Trunks Meeting Balance Objectives - Enter the percentage of trunks which must pass the balance test and the technical requirement for an office to pass (maintenance limit). Enter in percent rounded to 2 decimal places.

Row 0253 - Percent of Trunks Meeting Gain Slope Objective - Enter the percentage of trunks which must pass the gain slope test and the technical requirement for an office to pass (maintenance limit). Enter in percent rounded to 2 decimal places.

Row 0254 - Percent of Trunks Meeting C-Notch Objectives - Enter the percentage of trunks which must pass the C-notch test and the technical requirement for an office to pass (maintenance limit). Enter in percent rounded to 2 decimal places.

Semi-Annual Service Quality Report

Column Descriptions

Table I

Column (b) - Number of Residential Customers Surveyed - This column represents the number of residential customers surveyed. Enter in whole numbers.

Column (c) - Percent of Residential Customers Dissatisfied - This column represents the percentage of residential customers surveyed who registered a dissatisfied response. Enter this amount in percent, rounded to two places.

Column (d) - Small Business Customers Surveyed - This column represents the number of small business customers surveyed. "Small business customer" is defined by the filing LEC. Enter in whole numbers.

Column (e) - Percent of Small Business Customers Dissatisfied - This column represents the percentage of small business customers surveyed who registered a dissatisfied response. Enter this amount in percent, rounded to two places.

Column (f) - Number of Large Business Customers Surveyed - This column represents the number of large business customers surveyed. "Large business customer" is defined by the filing LEC. Enter in whole numbers.

Column (g) - Percent of Large Business Customers Surveyed - This column represents the percentage of large business customers surveyed who registered a dissatisfied response. Enter this amount in percent, rounded to two places.

Table II

Column (a) - Total Study Area - This column represents the total study area. A study area usually consists of a telephone company's service territory in a given state, although telephone companies occasionally have more than one study area in a particular state.

CERTIFICATION

I certify that I am an officer of _____: that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from

_____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

This document provides the instructions for FCC Report 43-07, the ARMIS Infrastructure Report, which was adopted by the Commission in CC Docket No. 87-313. The instructions consist of the following sections, which are attached.

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-07, the ARMIS Infrastructure Report, to the Commission.

B. General Information

1. FCC Report 43-07 was adopted by the Commission in the LEC Price Cap Order, Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6827-30 (1990). This report is prescribed for every mandatory price cap local exchange carrier. This report is not subject to the clearance procedures of 44 USC 3507 because there are less than ten respondents.

2. Affected carriers shall file by June 30 of each year for the previous calendar year.

3. The report shall be filed on a study area (Jurisdiction) basis.

4. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-07, which identifies the filing as the ARMIS Annual Infrastructure Report. The period identifies the year covered by the data. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is confidential, public or unrestricted. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a quarter's data. Higher numbers (2, 3, etc. must be used when filing successive revision to correct that quarter's submission. All corrective submissions must be filed, in both paper and diskette, with the Accounting and Audits Division, the Industry Analysis Division, and International Transcription Services (ITS).

5. All correspondence and pleadings shall identify the proceeding as CC Docket No. 87-313.

C. Where to file

1. Carriers submitting FCC Report 43-07 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, ITS, at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

	Trans-mittal Letter	Paper Report	Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division Room 812 2000 L Street, N.W. Washington D.C., 20554	1	1	1
FCC Common Carrier Bureau Industry Analysis Division Room 538 1919 M Street, N.W. Washington, D.C. 20554	1	1	1
Internal Transcription Services, Inc. (ITS) Room 246 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

D. Footnotes

1. If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances, the filing carrier must include footnote text to explain the specific circumstances fully. Certain items require accompanying footnotes and those items are specified in the appropriate section of the instructions for filing the 43-07. Such footnotes are mandatory and must be entered in the Footnote Text Records and Footnote Table.

   EXAMPLE:

   Table II, Row 410 requires the reporting carrier to specify the data entered as "Other" in a footnote.

2. Footnotes must contain full explanations.

EXAMPLE:

Do not say, "Data are compiled using a more inclusive process than in previous filings."
Do say, "Data are compiled using a process that includes xxx, which were not included in previous filings. The impact of including xxx in this row inflates this number by x% over the previous reporting period".

3. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must explain any deviations from those procedures

EXAMPLE:

Do not say, "This value was not calculated pursuant to the instructions."
Do say, "This value was calculated using the xxx method rather than the method described in the instructions because...."

4. Fully explain means the footnote will provide enough information for the data user to understanding the circumstances.

EXAMPLES:

Do not say, "Corrected data."
Do say, ""$xxx is changed to $xxx because...."

Do not say, "Waiver" or "Waiver granted."
Do say, "Waiver of Part xx.xxx was granted in CC Docket No. xx-xxx, X FCC Rcd, xxxx (1992) to allow AnyCompany to .... because ...."

5. Do not include explanatory footnotes in the transmittal letter. The footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the Automated Report Specifications.

E. Errata

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-07. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission and why those corrections were made.

2. Those references must be included in the Erratum Records and the Erratum Table as specified in the Automated Report Specifications.

F. Certification

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-07 by including a certification statement, signed by a corporate officer, as the last page of the paper report.

2. The text of the certification statement is included on page 22 of 22 in the attached report definition.

G. Waivers

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-07, it must file a petition for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single petition. The petition must demonstrate good cause for reporting a different or lower level or detail, must establish the duration of the waver requested, and must indicate how these deficiencies will be corrected.

2. Omission of individual data items or entries, without request for waiver, is unacceptable.

H. Public Information

1. The paper reports filed as Report 43-07 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the paper or automated reports filed as Report 43-07 may be obtained from the FCC's contractor for public records duplication, ITS at (202) 857-3824.

For further information regarding these procedures, contact:

Barbara Van Hagen
FCC Common Carrier Bureau
Accounting and Audits Division
(202) 634-1861

Approved by OMB[1]
3060-0395
Expires 05/31/9X
Estimated Burden Hours Per Response: 550 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-07, the ARMIS Annual Infrastructure Report which must be provided annually by study area. It contains the following:

	PAGE
Table I - Switching Equipment Table	3
Table II - Transmission Facilities Table	5
Table III - LEC Call Set-Up Time Table	7
Table IV - Additions and Book Costs Table	8
Table I - Row Instructions	9
Table II - Row Instructions	15
Table III - Row Instructions	18
Table IV - Row Instructions	19
Table I - Column Descriptions	20
Table II - Column Descriptions	20
Table III - Column Descriptions	20
Table IV - Column Descriptions	21
Certification	22

All percentage amounts must be entered in percent and rounded to 2 decimal places. All kilometers must be rounded to 1 decimal place. All monetary figures must be rounded to the nearest thousand dollars. All access lines must be rounded to the nearest thousand with the exception of access line gain which must be entered in whole numbers. All switches, tandems, host remotes, interfaces, circuit lines, carrier links, terminations, channels, copper pairs, and fiber strands must be entered in whole numbers.

All fields must be populated. If a data measure equals the quantity zero, enter zero in that field. This is the only proper use of zero in this report. If a filing carrier has a waiver applicable to a certain field, it must treat the data for that field as "Irretrievable" and footnote the reason for that entry (including a cite to the waiver, and a note as to its duration). Enter N/A in only those fields which are designated as such on the hard copy sample or in the instructions. Do not enter N/A in any other field. See Data Entry Convention, No. 5, in the Automated Report Specifications.

Do not include explanatory footnotes in the transmittal letter; such notes must be included in the Footnotes section of the filing. REMEMBER: Footnotes are mandatory for rows 410 and 460. Footnotes are mandatory for all "Irretrievable" entries.

---

[1] This request has been submitted to OMB for review.

NOTICE: The ARMIS Infrastructure Report collects data designed to capture trends in telephone industry infrastructure development under price cap regulation and improves and standardizes existing reporting requirements for this purpose. The ARMIS Infrastructure Report specifies information requirements in a consistent format and is essential to the FCC to monitor service quality under price cap regulation. Your response is mandatory.

This report is prescribed for every mandatory price cap local exchange carrier and local exchange carriers electing the incentive regulation plan. Public reporting burden for this collection of information is estimated to average 550 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FCC Report 43-07
ARMIS INFRASTRUCTURE REPORT

Approved by OMB
3060-0395
Expires 05/31/9X
xxxxxxxxxxx VERSION
SUBMISSION X
TABLE I

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE I - SWITCHING EQUIPMENT

Row		COLUMN		
		TOTAL STUDY AREA (a)	WITHIN MSA (b)	NON-MSA (c)
	SWITCHING ENTITIES/LINES IN SERVICE:			
0110	Total Switching Entities		N/A	N/A
0111	Local Switches			
0112	Tandems		N/A	N/A
0113	Hosts			
0114	Remotes (Stand Alone Only			
0120	Total Number Access Lines in Service			
	TYPE OF SWITCH:			
0130	Total E/M Switches		N/A	N/A
0131	Percent Total Switches		N/A	N/A
0132	E/M Local Switches			
0133	Percent Local Switches			
0134	E/M Tandems		N/A	N/A
0135	Percent Total Tandems		N/A	N/A
0140	E/M Lines Served			
0141	Percent Total Lines			
0150	Total ASPC Switches		N/A	N/A
0151	Percent Total Switches		N/A	N/A
0152	ASPC Local Switches			
0153	Percent Local Switches			
0154	ASPC Tandems		N/A	N/A
0155	Percent Total Tandems		N/A	N/A
0160	ASPC Lines Served			
0161	Percent Total Lines			
0170	Total DSPC Switches		N/A	N/A
0171	Percent Total Switches		N/A	N/A
0172	DSPC Local Switches			
0173	Percent Local Switches			
0174	DSPC Tandems		N/A	N/A
0175	Percent Total Tandems		N/A	N/A
0180	DSPC Lines Served			
0181	Percent Total Lines			
	SWITCHING CAPABILITY:			
0190	Switches Equipped for Equal Access		N/A	N/A
0191	Percent Total Switches		N/A	N/A

TABLE I - SWITCHING EQUIPMENT

Row		COLUMN		
		TOTAL STUDY AREA (a)	WITHIN MSA (b)	NON-MSA (c)
0200	Access Lines with Equal Access			
0201	Percent Total Lines			
0210	Touch-Tone Capable Switches			
0211	Percent Total Switches			
0220	Access Lines with Touch-Tone Capability			
0221	Percent Total Lines			
0230	Total Switches Equipped with SS7-394		N/A	N/A
0231	Percent Total Switches		N/A	N/A
0232	Lines with Access to SS7-394			
0233	Percent Total Access Lines			
0234	Total Switches Equipped with SS7-317		N/A	N/A
0235	Percent Total Switches		N/A	N/A
0236	Lines with Access to SS7-317			
0237	Percent Total Access Lines			
0240	Local Switches Equipped with SS7-394			
0241	Percent Total Local Switches			
0246	Local Switches Equipped with SS7-317			
0247	Percent Total Local Switches			
0250	Tandems Equipped with SS7-394		N/A	N/A
0251	Percent Total Tandems		N/A	N/A
0256	Tandems Equipped with SS7-317		N/A	N/A
0257	Percent Total Tandems		N/A	N/A
0270	Total Switches Equipped with ISDN		N/A	N/A
0271	Percent Total Switches		N/A	N/A
0280	Local Switches Equipped with ISDN			
0281	Percent Total Local Switches			
0290	Tandems Equipped with ISDN		N/A	N/A
0291	Percent Total Tandems		N/A	N/A
0300	Lines with Access to ISDN			
0301	Percent Total Lines			
0311	Basic Rate ISDN (BRI) Interfaces Equipped			
0312	Primary Rate ISDN (PRI) Interfaces Equipped			

FCC Report 43-07
ARMIS INFRASTRUCTURE REPORT

Approved by OMB
3060-0395
Expires 05/31/9X
xxxxxxxxxxx VERSION
SUBMISSION X
TABLE II

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE II - TRANSMISSION FACILITIES

Row		COLUMN
		TOTAL STUDY AREA
		(d)
	SHEATH KILOMETERS:	
0320	Total Sheath Kilometers	
0321	Copper	
0322	Fiber	
0323	Other	
	INTEROFFICE WORKING FACILITIES:	
0330	Total Circuit Links	
0331	Baseband	
0332	Analog CXR	
0333	Digital CXR	
0350	Analog Carrier Links	
0351	Copper	
0352	Radio	
0360	Digital Carrier Links	
0361	Copper	
0362	Radio	
0363	Fiber	
	LOOP PLANT - CENTRAL OFFICE TERMINATIONS:	
0370	Total Working Channels	
0380	Copper	
0381	Baseband	
0382	Analog CXR	
0383	Digital CXR	
0390	Fiber Digital CXR	
0410	Other	

FCC Report 43-07
ARMIS INFRASTRUCTURE REPORT

Approved by OMB
3060-0395
Expires 05/31/9X

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION X
TABLE II

TABLE II - TRANSMISSION FACILITIES

Row		COLUMN
		TOTAL STUDY AREA
		(d)
0420	Total Equipped Channels	
0430	Copper	
0431	Baseband	
0432	Analog CXR	
0433	Digital CXR	
0440	Fiber Digital CXR	
0460	Other	
	OTHER TRANSMISSION FACILITY DATA:	
0470	Copper Prs Term Main Frame (Loop Plant Only)	
0480	Fiber Strands Term in the CO (Loop Plnt Only)	
0481	Fiber Term at Customer Premises DS0 Rate	
0482	Fiber Term at Customer Premises DS1 Rate	
0483	Fiber Term at Customer Premises DS2 Rate	
0484	Fiber Term at Cust Prem DS3 Rate and higher	

FCC Report 43-07
ARMIS INFRASTRUCTURE REPORT

Approved by OMB
3060-0395
Expires 05/31/9X

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION X
TABLE III

TABLE III - LEC CALL SET-UP TIME

Row	Classification	Column					
		Average Call Set-Up Time					
		Direct			Via Access Tandem		
		End Offices	SS7-394	MF	SS7-394	MF	Mixed
		(e)	(f)	(g)	(h)	(i)	(j)
	TIME:						
00510	Total						
0511	End Offices/EMs						
0512	End Offices/SPC Analogs						
0513	End Offices/Digitals						
	PERCENT:						
0520	Total Access Lines						
0521	Access Lines/EMs						
0522	Access Lines SPC/Analog						
0523	Access Lines/Digitals						

FCC Report 43-07
ARMIS INFRASTRUCTURE REPORT

Approved by OMB
3060-0395
Expires 05/31/9X
xxxxxxxxxxx VERSION
SUBMISSION X
TABLE IV

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE IV - ADDITIONS AND BOOK COSTS

Row		COLUMN
		TOTAL STUDY AREA
		(k)
0530	Total Access Lines in Service	
0531	Access Line Gain	
0540	Total Gross Capital Expenditures	

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Infrastructure Report

General Instructions

For the purposes of this report, the terms switch, switching entity and entity are used interchangeably. The terms access lines, lines and lines in service are also used interchangeably.

Row Instructions

Table I

Switching Entities - Switching entities are assemblies of equipment designed to establish connections between lines and trunks. Switching entities include access tandems, local, class 5 switching machines and any associated remotes; e.g., a host end office and its three associated remotes will be reported as four switching entities. There may be more than one switching entity per central office or wire center. Switching entities designed exclusively for operator services are not reported here.

Lines in Service - Access lines include all classifications of local exchange telephone service including, but not limited to, individual lines, party line access, PBX access, Centrex access, Coin access, Foreign Exchange access and WATS access. Access lines, as defined herein, is a more inclusive term than billable access lines, as defined in the ARMIS 43-01 and 43-04 reports. See row instructions for rows 2090 through 2140 of the ARMIS 43-01 report and for 9010 of the ARMIS 43-04 report for the definition of billable access lines.

Row 0110 - Total Switching Entities - Enter the total number of local and access tandem switching entities on this row. Remotes to be included in the total switching entities count are those described in the general definition of remote.[2] A remote switching entity can generally be described as a switching entity that has no connection to the facilities network except through one other (host) switching entity that shares the processing capabilities of another switching system for certain control functions under the direction of the host central processor, and that can be controlled remotely by the host over a pair of dedicated data links. This amount is equal to the sum of rows 0130, 0150 and 0170. Tandem switching entities are used to connect local switching entities with local switching entities in other central offices. This report includes those tandems that are designed exclusively to establish connections between trunks. Since some switches are used for both local and access tandem switching, the sum of rows 0110 and 0112 may be greater than the amounts entered on this

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[1] This request has been submitted to OMB for review.

[2] See 7 FCC Rcd 3590 (Com.Car.Bur. 1992).

row. For example, if there are 6 local switches, 4 tandem switches and 5 switches that are used for both local and tandem switching, row 0111 would equal 11 local switches, row 0112 would equal 9 switches, and row 0110 would equal 14 switches. In this case, the sum of rows 0111 and 0112 (20) would be greater than the amount of total switching entities (15). Since we are asking only for the number of remotes with stand-alone capability, the total of rows 0113 and 0114 will be less than the total of the amounts entered on this row. For example, if there are 16 total switching entities, and there are 3 hosts and 7 remotes that have stand-alone capability, the sum of rows 0113 and 0114 (10) would be less than the amount of total switching entities (16). Enter in whole numbers.

Row 0111 - Local Switches - Enter the total number of switches used as local switches on this row. This amount is equal to the sum of rows 132, 152 and 172. Enter in whole numbers.

Row 0112 - Access Tandems - Enter the total number of switches with access tandem capability on this row. This amount is equal to the sum of rows 134, 154 and 174. Enter in whole numbers.

Row 0113 - Hosts - A host is a switch serving one or more remotes. Enter in whole numbers.

Row 0114 - Remotes (Stand-Alone Only) - A remote switching entity can generally be described as a switching entity that has no connection to the facilities network except through one other (host) switching entity, that shares the processing capabilities of another switching system for certain control functions under the direction of the host central processor, and that can be controlled remotely by the host over a pair of dedicated data links. All types of remote switches are included with the switching entity counts in row 110. However, row 0114 excludes remotes that are incapable of providing stand-alone operation when the host switch fails. Only those remote switching entities that are equipped to operate in a stand-alone fashion (i.e., able to operate when the host fails, or the data links to the host fail) to be able to provide more limited service, are to be reported on row 0114. Remote entities that are not within this description should not be included on this row. Enter in whole numbers.

Row 0120 - Total Number Access Lines In Service - Enter the total number of access lines in service on this row. This amount is equal to the sum of rows 0140, 0160 and 0180. Round to the nearest thousand.

Type of Switch - Types of switches include Electro-Mechanical (E/M), e.g., Step-by-Step and Crossbar; Analog Stored Program Controlled (ASPC); and Digital Stored Program Controlled (DSPC).

Row 0130 - Total E/M Switches - Enter the total number of local and tandem Electro-Mechanical switches on this row. Since some switches are used for both local and tandem switching, the sum of rows 132 and 134 may be greater than the amounts entered on this row (see example, row 0110). Enter in whole numbers.

Row 0131 - Percent Total Switches - Enter the ratio of Electro-Mechanical switches to total switches, in percent (row 130 divided by row 110). Round to 2 decimal places.

Row 0132 - E/M Local Switches - Enter the total number of Electro-Mechanical switches used as local switches on this row.. Enter in whole numbers.

Row 0133 - Percent Local Switches - Enter the ratio of Electro-Mechanical local switches to total local switches, in percent (row 0132 divided by row 0111). Round to 2 decimal places.

Row 0134 - E/M Tandems - Enter the total number of Electro-Mechanical switches with tandem capability on this row. Enter in whole numbers.

Row 0135 - Percent Total Tandems - Enter the ratio of Electro-Mechanical tandems to total tandems, in percent (row 0134 divided by 0112). Round to 2 decimal places.

Row 140 - E/M Lines Served - Enter the number of lines served by Electro-Mechanical switches. Round to the nearest thousand.

Row 0141 - Percent Total Lines - Enter the ratio of lines served by Electro-Mechanical switches to total lines in service, in percent (row 0140 divided by row 0120). Round to 2 decimal places.

Row 0150 - Total ASPC Switches - Enter the total number of local and tandem Analog Stored Program Controlled switches. Since some switches are used for both local and tandem switching, the sum of rows 152 and 154 may be greater than the amounts entered on this row (see example, row 0110). Enter in whole numbers.

Row 0151 - Percent Total Switches - Enter the ratio of Analog Stored Program Controlled switches to total switches, in percent (row 0150 divided by row 0110). Round to 2 decimal places.

Row 0152 - ASPC Local Switches - Enter the total number of Analog Stored Program Controlled switches used as local switches on this row. Enter in whole numbers.

Row 0153 - Percent Local Switches - Enter the ratio of Analog Stored Program Controlled switches to total local switches, in percent (row 0152 divided by row 0111). Round to 2 decimal places.

Row 0154 - ASPC Tandems - Enter the total number of Analog Stored Program Controlled switches with tandem capability on this row. Enter in whole numbers.

Row 0155 - Percent Total Tandems - Enter the ratio of Analog Stored Program Controlled tandems to total tandems, in percent (row 0154 divided by row 0112). Round to 2 decimal places.

Row 0160 - ASPC Lines Served - Enter the number of lines served by Analog Stored Program Controlled switches. Round to the nearest thousand.

Row 0161 - Percent Total Lines - Enter the ratio of lines served by Analog Stored Program Controlled switches to total lines in service, in percent (row 160 divided by row 0120). Round to 2 decimal places.

Row 0170 - Total DSPC Switches - Enter the total number of local and tandem Digital Stored Program Controlled switches. Since some switches are used for both local and tandem switching, the sum of rows 172 and 174 may be greater than the amounts entered on this row (see example, row 0110). Enter in whole numbers.

Row 0171 - Percent Total Switches - Enter the ratio of Digital Stored Program Controlled switches to total switches, in percent (row 0170 divided by row 0110). Round to 2 decimal places.

Row 0172 - DSPC Local Switches - Enter the total number of Digital Stored Program Controlled switches used as local switches on this row. Enter in whole numbers.

Row 0173 - Percent Local Switches - Enter the ratio of Digital Stored Program Controlled local switches to total local switches, in percent (row 0172 divided by row 0111). Round to 2 decimal places.

Row 0174 - DSPC Tandems - Enter the total number of Digital Stored Program Controlled switches with tandem capability on this row. Enter in whole numbers.

Row 175 - Percent Total Tandems - Enter the ratio of Digital Stored Program Controlled tandems total tandems, in percent (row 0174 divided by row 0112). Round to 2 decimal places.

Row 0180 - DSPC Lines Served - Enter the number of lines served by Digital Stored Program Controlled switches. Round to the nearest thousand.

Row 0181 - Percent Total Lines - Enter the ratio of lines served by Digital Stored Program Controlled switches to total lines in service, in percent (row 0180 divided by row 0120). Round to 2 decimal places.

Row 0190 - Switches Equipped for Equal Access - Enter the number of switching entities equipped for equal access, Feature Group D service. Enter in whole numbers.

Row 0191 - Percent Total Switches - Enter the ratio of switches equipped for equal access to total switches, in percent (row 0190 divided by row 0110). Round to 2 decimal places.

Row 0200 - Access Lines with Equal Access - Enter the number of access lines served by switches equipped for equal access. Round to the nearest thousand.

Row 0201 - Percent Total Lines - Enter the ratio of lines served by switches equipped for equal access to total lines in service, in percent (row 0200 divided by row 0120). Round to 2 decimal places.

Row 0210 - Touch-Tone Capable Switches - Enter the number of switching entities equipped for Touch-Tone. Enter in whole numbers.

Row 0211 - Percent Total Switches - Enter the ratio of switches equipped for Touch-Tone to total switches, in percent (row 0210 divided by row 0111). Round to 2 decimal places.

Row 0220 - Access Lines with Touch-Tone Capability - Enter the number of access lines served by switches equipped for Touch-Tone. Round to the nearest thousand.

Row 0221 - Percent Total Lines - Enter the ratio of access lines served by switches equipped for Touch-Tone to total access lines, in percent (row 0220 divided by row 0120). Round to 2 decimal places.

Row 0230 - Total Switches Equipped with SS7-394 - Enter the total number of local and tandem switches equipped with SS7-394. Enter in whole numbers.

Row 0231 - Percent Total Switches - Enter the ratio of switches equipped with SS7-394 to total switches, in percent (row 0230 divided by row 0110). Round to 2 decimal places.

Row 0232 - Lines with Access to SS7-304 - Enter the number of lines in service that are served by switches equipped with SS7-394. Round to the nearest thousand.

Row 0233 - Percent Total Access Lines - Enter the ratio of lines served by switches equipped with SS7-394 to total access lines, in percent (row 0232 divided by row 0120). Round to 2 decimal places.

Row 0234 - Total Switches Equipped with SS7-317 - Enter the total number of switches equipped with SS7-317 on this row. Enter in whole numbers.

Row 0235 - Percent Total Switches - Enter the ratio of switches equipped with SS7-317 to total switches, in percent (row 0234 divided by row 0110). Round to 2 decimal places.

Row 0236 - Lines with Access to SS7-317 - Enter the number of lines served by switches equipped with SS7-317. Round to the nearest thousand.

Row 0237 - Percent Total Access Lines - Enter the ratio of access lines served by switches equipped with SS7-317 to total access lines, in percent (row 0236 divided by row 0120). Round to 2 decimal places.

Row 0240 - Local Switches Equipped with SS7-394 - Enter the number of switches used as local switches that are equipped with SS7-394. Enter in whole numbers.

Row 0241 - Percent Total Local Switches - Enter the ratio of local switches equipped with SS7-394 to total local switches, in percent (row 0240 divided by row 0111). Round to 2 decimal places.

Row 0246 - Local Switches with SS7-317 - Enter the total number of local switches equipped with SS7-317. Enter in whole numbers.

Row 0247 - Percent Total Local Switches - Enter the ratio of local switches equipped with SS7-317 to total local switches, in percent (row 0246 divided by row 0111). Round to 2 decimal places.

Row 0250 - Tandems Equipped with SS7-394 - Enter the total number of switches with tandem capability that are equipped with SS7-394. Enter in whole numbers.

Row 0251 - Percent Total Tandems - Enter the ratio of tandem switches equipped with SS7-394 to total tandems, in percent (row 0250 divided by row 0112). Round to 2 decimal places.

Row 0256 - Tandems Equipped with SS7-317 - Enter the total number of switches with tandem capability that are equipped with SS7-317. Enter in whole numbers.

Row 0257 - Percent Total Tandems - Enter the ratio of tandem switches equipped with SS7-317 to total tandems, in percent (row 0256 divided by row 0112). Round to 2 decimal places.

Row 0270 - Total Switches Equipped with ISDN - Enter the total number of local and tandem switches that are equipped with ISDN. Since some switches are used for both local and tandem switching, the sum of rows 0280 and 0290 may be greater than the amounts entered on this row (see example, row 0110). Enter in whole numbers.

Row 0271 - Percent Total Switches - Enter the ratio of switches equipped with ISDN to total switches, in percent (row 0270 divided by row 0110). Round to 2 decimal places.

Row 0280 - Local Switches Equipped with ISDN - Enter the number of switches used as local switches that are equipped with ISDN. Enter in whole numbers.

Row 0281 - Percent Total Local Switches - Enter the ratio of local switches equipped with ISDN to total local switches, in percent (row 0280 divided by row 0111). Round to 2 decimal places.

Row 0290 - Tandems Equipped with ISDN - Enter the number of switches with tandem capability that are equipped with ISDN. Enter in whole numbers.

Row 0291 - Percent Total Tandems - Enter the ratio of tandems equipped with ISDN to total tandems, in percent (row 0290 divided by row 0112). Round to 2 decimal places.

Row 0300 - Lines with Access to ISDN - Enter the number of lines served by switches equipped with ISDN. Round to the nearest thousand. Do not include in this count lines that could be connected to switches equipped with ISDN.

Row 0301 - Percent Total Lines - Enter the ratio of lines served by switches equipped with ISDN to total lines in service, in percent (row 0300 divided by row 0120). Round to 2 decimal places. Do not include in this count lines that could be connected to switches equipped with ISDN.

Row 0311 - Basic Rate ISDN (BRI) Interfaces Equipped - Basic rate ISDN consists of two Bearer Channels at 64 Kilobits/second and one Delta Channel at 16 kilobits/second. Quantities reflected are the number of (2B+D) BRI interfaces equipped. This amount represents actual interfaces equipped with ISDN. Enter in whole numbers.

Row 0312 - Primary Rate ISDN (PRI) Interfaces Equipped - Equivalent primary rate ISDN interfaces are generally configured as 23 Bearer Channels and one Delta Channel all at 64 kilobits/second. Quantities reflected are the number of equivalent PRI (23B+D) ISDN interfaces equipped, excluding interoffice PRI ISDN interfaces. This amount represents actual interfaces equipped with ISDN. Enter in whole numbers.

Table II

Row 0320 - Total Sheath Kilometers - Sheath kilometers include loop, interoffice and toll sheath kilometers; a sheath kilometer may include multiple lines and circuits. Round to 1 decimal place.

Row 0321 - Copper - Enter the number of sheath kilometers of twisted pair copper cable on this row. Round to 1 decimal place.

Row 0322 - Fiber - Enter the number of sheath kilometers of fiber on this row. Round to 1 decimal place.

Row 0323 - Other - Enter the number of sheath kilometers of aluminum, coaxial, and all other sheath kilometers not included in rows 0321 or 0322, on this row. Round to 1 decimal place.

Row 0330 - Total Circuit Links - A circuit link is that link that exists between points A and B where voice frequency/DSO cross-connects and/or analog/digital conversion (collectively referenced here as conversion) occurs. Circuit links are counted as follows: If there is a circuit between A and B with no intermediate conversions, count one circuit link for each voice frequency equivalent channel. If there is a circuit between A and B with one intermediate conversion, count two circuit links for each voice frequency equivalent channel. Similarly, two intermediate conversions between A and B would result in three circuit links per voice equivalent channel. Enter in whole numbers.

Row 0331 - Baseband - Enter the number of baseband circuit links on this row. Enter in whole numbers.

Row 0332 - Analog CXR - Enter the number of analog CXR circuit links, converted to voice frequency equivalents, on this row. Enter in whole numbers.

Row 0333 - Digital CXR - Enter the number of digital CXR circuit links, converted to voice grade equivalents, on this row. Enter in whole numbers.

Carrier Links - A Carrier Technology Segment (carrier link) is defined as a segment of the interoffice network disaggregated by technology (i.e., analog, digital); and by medium (i.e., copper, fiber, or radio). Each segment between central offices or other interoffice network nodes is defined as a unique carrier technology segment. For these purposes, a central office is an inter-office network node. Other interoffice network nodes are defined as any points in the interoffice network where a cross-connect occurs, or where a change in technology or medium occurs. Counts are on an analog group or DS1 equivalent basis.

Row 0350 - Analog Carrier Links - Enter the number of analog carrier links on this row. This amount equals the sum of rows 0351 and 0352. Enter in whole numbers.

Row 0351 - Copper - Enter the number of copper analog carrier links on this row. Enter in whole numbers.

Row 0352 - Radio - Enter the number of radio analog carrier links on this row. Enter in whole numbers.

Row 0360 - Digital Carrier Links - Enter the number of digital carrier links on this row. This amount equals the sum of rows 0361, 0362 and 0363. Enter in whole numbers.

Row 0361 - Copper - Enter the number of copper digital carrier links on this row. Enter in whole numbers.

Row 0362 - Radio - Enter the number of radio digital carrier links on this row. Enter in whole numbers.

Row 0363 - Fiber - Enter the number of fiber digital carrier links on this row. Enter in whole numbers.

LOOP PLANT - CENTRAL OFFICE TERMINATIONS - These facilities are from the central office to the end users. Local loop includes analog type services only. It excludes ISDN.

Row 0370 - Total Working Channels - Working Channels are on a 4 kHz bandwidth (single voice channel) basis. Working channels originating from a remote switch are treated the same as if the channels originated in the host central office. All reports of working channels are counted on this 4 kHz basis for purposes of this report. This amount equals the sum of rows 0380, 0390 and 0410. Enter in whole numbers.

Row 0380 - Total Copper - Enter the number of copper working channels on this row. This amount equals the sum of rows 0381, 0382 and 0383. Enter in whole numbers.

Row 0381 - Baseband - Enter the number of baseband copper working channels, converted to voice frequency equivalents, on this row. Enter in whole numbers.

Row 0382 - Analog - Enter the number of analog copper working channels, converted to voice frequency equivalents, on this row. Enter in whole numbers.

Row 0383 - Digital - Enter the number of digital copper working channels, converted to voice frequency equivalents, on this row. Enter in whole numbers.

Row 390 - Fiber Digital CXR - Enter the number of fiber digital CXR working channels, converted to voice frequency equivalents, on this row. Enter in whole numbers.

Row 0410 - Other - Enter the number of other working channels on this row. Explain the data entered here in a footnote. Enter in whole numbers.

Row 0420 - Total Equipped Channels - Equipped channels are on a 4 kHz bandwidth (single voice channel) basis. Equipped channels originating from a remote switch are treated the same as if the channels originated in the host central office. This amount equals the sum of rows 0430, 0440 and 0460. Enter in whole numbers.

Row 0430 - Copper - Enter the number of copper equipped channels on this row. This amount equals the sum of rows 0431, 0432 and 0433. Enter in whole numbers.

Row 0431 - Baseband - Enter the number of baseband copper equipped channels in whole numbers on this row.

Row 0432 - Analog CXR - Enter the number of analog CXR copper equipped channels in whole numbers on this row.

Row 0433 - Digital CXR - Enter the number of digital CXR copper equipped channels in whole numbers on this row.

Row 0440 - Fiber Digital CXR - Enter the number of fiber digital CXR equipped channels in whole numbers on this row.

Row 0460 - Other - Enter the number of other equipped channels in whole numbers on this row. Explain the data entered here in a footnote.

Row 0470 - Copper Pairs Terminated at the Main Frame (Loop Plant Only) - Enter the number of copper pairs terminated at the main frame in whole numbers.

Row 0480 - Fiber Strands Terminated in the Central Office (Loop Plant Only) - Enter the number of individual fiber strands terminated in central offices in whole numbers on this row.

Row 0481 - Fiber Terminated at Customer's Premises at the DSO Rate - Enter the number of individual customer services provided over fiber strands terminated at the customer's premises, other than trials, at the DSO rate on this row. Enter in whole numbers.

Row 0482 - Fiber Terminated at Customer's Premises at the DS1 Rate - Enter the number of individual customer services provided over fiber strands terminated at the customer's premises, other than trials, at the DS1 rate on this row. Enter in whole numbers.

Row 0483 - Fiber Terminated at Customer's Premises at the DS2 Rate - Enter the number of individual customer services provided over fiber strands terminated at the customer's premises, other than trials, at the DS2 rate on this row. Enter in whole numbers.

Row 0484 - Fiber Terminated at the Customer's Premises at the DS3 Rate or Higher -Enter the number of individual customer services provided over fiber strands terminated at the customer's premises, other than trials, at the DS3 rate or higher on this row. Footnote the number of individual services provided over fiber strands terminated at the customer's premises at a higher than DS3 rate, if any. Enter in whole numbers.

Table III

Row 0510 - Total - Enter the data for the total number of end offices in the appropriate columns on this row. Enter in whole numbers in column (e), End Offices. Round columns (f) through (j) to 2 decimal places.

Row 0511 - End Offices Electro-Mechanical Switches - Enter the data for the total number of end offices equipped with electro-mechanical switches in the appropriate columns on this row. Enter in whole numbers in column (e), End Offices. Round columns (f) through (j) to 2 decimal places.

Row 0512 - End Office SPC Analog Switches - Enter the data for the total number of end offices equipped with SPC analog switches in the appropriate columns in this row. Enter in whole numbers in column (e), End Offices. Round columns (f) through (j) to 2 decimal places.

Row 0513 - End Office Digital Switches - Enter the data for the total number of end offices equipped with Digital Switches in the appropriate columns on this row. Enter in whole numbers in column (e), End Offices. (Round columns (f) through (j) to 2 decimal places.

Row 0520 - Total Access Lines - Enter the percent of the network represented by the total number of access lines in the appropriate columns in this row. Round to 2 decimal places.

Row 0521 - Access Lines Electro-Mechanical Switches - Enter the percent of the network represented by the total number of access lines equipped with electro-mechanical switches in the appropriate columns on this row. Round to 2 decimal places.

Row 0522 - Access Lines SPC Analog Switches - Enter the percent of the network represented by the total number of access lines equipped with SPC analog switches in the appropriate columns on this row. Round to 2 decimal places.

Row 0523 - Access Lines Digital Switches - Enter the percent of the network represented by the total number of access lines equipped with Digital Switches in the appropriate columns on this row. Round to 2 decimal places.

Table IV

Row 0530 - Total Access Lines in Service - Enter the number of all access lines in service on this row. Round to the nearest thousand.

Row 0531 - Access Line Gain - This amount is calculated by subtracting outward movement from inward movement. Enter in whole numbers.

Row 0540 - Total Gross Capital Expenditures - Enter the dollar amount of gross additions to accounts 2110, 2210, 2220, 2230, 2310, 2410, 2680 and 2690 during the current reporting period. See also ARMIS Report 43-02, row 260, column (ac). Gross capital expenditures are consistent with Form M and ARMIS. Round to the nearest thousand.

Infrastructure Report

Column Descriptions

Table I

Column (a) - Total Study Area - This column represents the total study area. A study area usually consists of a telephone company's service territory in a given state, although telephone companies occasionally have more than one study area in a particular state. Enter the facilities in the total study area in this column. This amount should equal column (b) plus column (c).

Column (b) - within MSA - This column represents all MSAs served within the study area. MSAs, or Metropolitan Statistical Areas, are designated by the Office of Management and Budget in a list following each decennial census. An MSA includes at least one city with a minimum population of 50,000 and its surrounding area, or a Census Bureau defined urbanized area of at least 50,000 population located in one or more counties that qualify and whose population is at least 100,000. See 55 Fed. Reg. 12154 (March 30, 1990). Enter the facilities within any MSA in the Study Area in this column.

Column (c) - non-MSA - This column represents all areas which lie outside of any MSA. Enter the facilities in the Study Area which are located outside of any MSA.

Table II

Column (d) - Total Study Area - See description for Table I, column (a).

Table III

Call Set-Up Time - For the purposes of infrastructure reporting, call set-up time is defined as "the time between dialing the last digit and the response or acknowledgement 'winkback', or the acknowledgement of signal receipt from the interexchange carrier."

Column (e) - End Offices - Enter the total number of end offices appropriate for each row, in this column. The access line counts in this column should be consistent with the access line data provided in Table I of the Infrastructure Report. Footnote the number of end offices used in the Bellcore studies that developed the underlying data.

Average Call Set-Up Time - Average call set-up time is the average amount of call set-up time for all end office types.

Direct - Direct access from the end office to the interexchange carrier POP.

Column (f) - SS7-394 - Enter the average call set-up time, or the percent of network represented, as appropriate, for direct access from end offices using SS7-394.

Column (g) - MF - Enter average call set-up time, or the percent of the network represented, as appropriate, for direct access from end offices using multifrequency signaling.

Via Access Tandem - End Offices routing calls through a switch having tandem capability.

Column (h) - SS7-394 - Enter the average call set-up time, or the percent of the network represented, as appropriate, for end office routing calls through tandem switches using SS7-394.

Column (i) - MF - Enter the average call set-up time, or percent of the network represented, as appropriate, for end offices routing calls through tandem switches using multifrequency signaling.

Column (j) - Mixed - Enter the average call set-up time, or percent of the network represented, as appropriate, for end offices using multifrequency signaling, routing calls through an access tandem switch using SS7-394 signaling.

Table IV

Column (k) - Total Study Area - See description for Table I, column (a).

CERTIFICATION

I certify that I am an officer of _____: that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from

_____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

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